



MEMORANDUM

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DEC 13 2012

PUBLIC SERVICE
COMMISSION

Date: December 12, 2012

To: Public Service Commission

From: Mary L. Myers

Subject: 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

Comments:

Applicants Corix Utilities (Illinois) LLC; Hydro Star, LLC; Utilities, Inc.; and Water Service Corporation of Kentucky, jointly and by counsel, hereby provide notice that they are filing the North Carolina Utilities Commission's final order in Case No. W-1000, SUB 14 and the Pennsylvania Public Utility Commission's final order in Docket Nos. A-2012-2299431, et al., which are required to be filed by Public Service Commission Order dated August 13, 2012.

Enclosed please find 12 copies of the North Carolina and Pennsylvania Final Orders to be filed on behalf of Water Service Corporation of Kentucky. We ask that the extra copies of the Orders be file-stamped and returned to us in the envelope provided. Thank you for your assistance.

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STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

RECEIVED

DEC 13 2012

PUBLIC SERVICE
COMMISSION

DOCKET NO. W-1000, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Corix Utilities (Illinois) LLC) ORDER APPROVING
to Indirectly Acquire the Outstanding) ACQUISITION OF STOCK AND
Stock of Utilities, Inc.) REQUIRING CUSTOMER NOTICE

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, September 25, 2012

BEFORE: Commissioner ToNola D. Brown-Bland, Presiding, Commissioner William Culpepper, III, and Commissioner Lucy T. Allen

APPEARANCES:

For Utilities, Inc. and Corix Utilities (Illinois) LLC:

Christopher J. Ayers, Esq., PoynerSpruill, LLP, 301 Fayetteville Street, Suite 1900, Raleigh, North Carolina 27601

For Corolla Light Community Association, Inc.:

Britton Allen, Esq., Brady Allen, Esq., Allen Law Office, PLLC, 1514 Glenwood Avenue, Suite 200, Raleigh, North Carolina 27608

For the Town of Harrisburg, North Carolina:

Daniel C. Higgins, Esq., Burns, Day & Presnell, P.A., 2626 Glenwood Avenue, Suite 560, Raleigh, North Carolina 27608

For the Using and Consuming Public:

Gina C. Holt, Staff Attorney, William Grantmyre, Staff Attorney, Public Staff – North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699-4326

BY THE COMMISSION: On April 13, 2012, Corix Utilities (Illinois) LLC (Corix or Applicant) filed an application and exhibits pursuant to G.S. 62-111(a) to acquire 100% of the membership interests of Hydro Star, LLC (Hydro Star), which through its wholly

owned subsidiary, Hydro Star Holdings Corporation, owns 100% of the issued and outstanding common stock of Utilities, Inc. (UI).

On June 18, 2012, the North Carolina Utilities Commission (Commission) issued an order scheduling hearing and requiring customer notice. The hearing was scheduled for Tuesday, September 25, 2012. Separate petitions to intervene were filed by Corolla Light Community Association, Inc., and the Town of Harrisburg, North Carolina. Said petitions were granted by orders dated August 16, 2012, and September 7, 2012, respectively.

On August 27, 2012, Corix and UI pre-filed the joint direct testimony of Steven M. Lubertozzi and Hamish Cumming. On September 10, 2012, the Public Staff filed the testimony of Katherine A. Fernald, Gina Y. Casselberry and Calvin C. Craig, III. Also on September 10, Hydro Star, Corix and the Public Staff filed a Stipulation. On September 18, 2012, the joint pre-filed rebuttal testimony of Steven M. Lubertozzi and Hamish Cumming was filed on behalf of Corix and UI.

A Stipulation was entered into between the Applicant and the Public Staff on September 10, 2012 resolving the issues between these parties. The Stipulation was presented to the Commission for its consideration. The Stipulation submitted by the Applicant and the Public Staff requested that the indirect transfer of outstanding common stock of UI be approved subject to the following provisions and conditions:

- (a) All records of UI will be physically available as required by North Carolina law.
- (b) Corix will comply with any Commission requirement that UI personnel familiar with the company records be reasonably available in North Carolina.
- (c) Corix and/or UI will not seek recovery of losses or subsidization of non-utility subsidiaries or affiliates of Corix or UI from North Carolina customers.
- (d) The officers and management of UI will have reasonable authority to commit UI, and its North Carolina regulated subsidiaries, on matters considered jurisdictional to the Commission.
- (e) Corix and UI will seek Commission permission before a corporate restructuring of UI.
- (f) No franchise of UI, or any of its North Carolina regulated subsidiaries, now existing or hereafter issued by the Commission under the provisions of the Public Utilities Act of North Carolina, shall be sold, assigned, pledged, or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any

rights thereunder leased, nor shall any merger or combination, including Corix and/or UI, affecting UI and/or any of its North Carolina regulated subsidiaries, be made through acquisition of control by stock purchase or otherwise, except after application to and written approval by the Commission.

- (g) Corix and UI agree to be bound by the North Carolina law and Commission Orders and rules and regulations as they relate to UI's North Carolina regulated subsidiaries.
- (h) Corix and UI will seek Commission permission before a corporate restructuring of Corix if it could have an effect on the rates or service of UI's subsidiaries in North Carolina.
- (i) UI and Corix agree that any acquisition of Corix, or transfer of control of UI, through an acquisition is subject to Commission approval pursuant to North Carolina General Statute § 62-111. Any such transfer without such approval is forbidden and void.
- (j) All costs of the acquisition incurred by Corix and/or UI, including compensation costs, and all direct and indirect corporate cost increases for UI, or any of its subsidiaries will be recorded to account number 426 (Miscellaneous Non Utility Expense) and shall be treated for accounting and ratemaking purposes so that they do not affect the water and sewer rates and charges of UI's subsidiaries. For purposes of this agreement, the term "corporate cost increases" is defined as costs in excess of the level that UI would have incurred using prudent business judgment had the acquisition not occurred.
- (k) All costs of the 2002 merger approved by the Commission in Docket No. W-1000, Sub 9, incurred by nv Nuon and/or UI, and the 2006 merger approved by the Commission in Docket No. W-1000, Sub 11, incurred by Hydro Star and/or UI, including compensation costs, and all direct and indirect corporate cost increases for UI or any of its subsidiaries will be recorded to account number 426 (Miscellaneous Non Utility Expense) and shall be treated for accounting and ratemaking purposes so that they do not affect the water and sewer rates and charges of UI's subsidiaries. For purposes of this agreement, the term "corporate cost increases" is defined as costs in excess of the level that UI would have incurred using prudent business judgment had the merger not occurred.
- (l) Corix and UI and all affiliates shall take all such actions as may be reasonably necessary and appropriate to hold North Carolina

ratepayers harmless from rate increases, foregone opportunities for rate decreases, and/or any other adverse effects of the transfer.

- (m) Future payments to officers for annual bonuses, incentive bonuses, long-term incentive bonuses, and any other bonuses made in relation to this acquisition will be excluded from UI's utility accounts and shall be treated for accounting and ratemaking purposes so that they do not affect the water and sewer rates and charges of UI's subsidiaries.
- (n) Base salaries, compensation payments, annual bonuses, incentive bonuses, long-term incentive bonuses, any other bonuses, and any incentive compensation other than those listed in Item m above shall be subject to review and ratemaking adjustments in future rate proceedings for UI, where UI holds a Commission-issued certificate, and for its North Carolina regulated subsidiaries (including areas included within the certificate of such subsidiaries through operation of G.S. 62-110(a)). The burden of proof on each of these issues shall be upon UI and its North Carolina regulated subsidiaries.
- (o) Any acquisition adjustment that results from the acquisition will be excluded from UI's utility accounts and treated for accounting and ratemaking purposes so that it does not affect water and sewer rates and charges of UI's subsidiaries.
- (p) Corix and UI and its North Carolina regulated subsidiaries shall each maintain its books and records so that its equity capital is recorded pursuant to the respective NARUC Uniform System of Accounts for Class A Water and Class A Wastewater Utilities, as revised in 1996, and all subsequent revisions.
- (q) Corix shall provide UI, to the extent it holds certificates issued by the Commission, and its North Carolina regulated subsidiaries with sufficient access to equity and debt capital to enable UI and its North Carolina regulated subsidiaries to adequately fund and maintain their current and future water and wastewater systems, and otherwise meet the service needs of their customers at a reasonable cost. The timing and quantity of any capital expenditures or discrete capital infusion shall be determined by the Applicant's best judgment consistent with the requirement to maintain the current future water and wastewater systems and otherwise meet the service needs of the customers at a reasonable cost.

- (r) The books and records of Corix and any other affiliated companies will be made available for inspection as required under North Carolina General Statute § 62-51.
- (s) UI's North Carolina operating subsidiaries and UI, where they hold certificates from the Commission, shall comply with the requirements of G.S. 62-153 with respect to the procurement of goods or services from Corix or other affiliated or subsidiary companies or entities. Whenever UI's North Carolina operating subsidiaries and UI, where they hold certificates from the Commission, seek to recover through rates the costs of goods or services procured from Corix or other affiliated or subsidiary companies or entities, or whenever the Commission requires it, UI shall have the burden of persuasion and proof as to the reasonableness of such costs in accordance with North Carolina law.
- (t) UI's operations and the operations of UI's North Carolina subsidiaries are currently generally in compliance with applicable environmental regulations. In cases where UI's and/or its North Carolina subsidiaries are involved in environmental compliance issues, UI and Corix agree to continue to cooperate with all regulatory agencies in addressing any outstanding compliance issues, to the satisfaction of the environmental regulatory agencies and the Public Staff.
- (u) UI shall maintain its current North Carolina management.
- (v) UI, through the appropriate operating North Carolina subsidiaries, agrees to continue to be responsive to customer inquiries regarding the adequacy of service, billing issues, and compliance issues, and to maintain customer access to compliance, billing, and other operational information.
- (w) UI, through the appropriate operating North Carolina subsidiaries, will continue to take steps designed to implement and further its commitment to provide superior service to North Carolina water and sewer customers.

The matter came on for public and evidentiary hearing on September 25, 2012. Steven M. Lubertozzi and Hamish Cumming testified on behalf of the Applicant in support of the application. Katherine A. Fernald, Gina Y. Casselberry and Calvin C. Craig, III, testified on behalf of the Public Staff and in support of the Stipulation. Also testifying as public witnesses were: Vincent Roy from Carolina Trace, Perry Rivers from Huntwick Subdivision and Michael Rose from Town of Harrisburg.

At the September 25, 2012 hearing, the Applicant and Public Staff presented additional stipulations that were entered into the record as an exhibit:

1. UI and its wholly owned subsidiaries in North Carolina shall continue to honor their prior existing contracts including but not limited to:
 - (a) Contract dated April 26, 1985, executed by the prior utility Mercer Environmental Corporation which includes providing water and wastewater service to Aragona Village in Onslow County, North Carolina, without charging any tap on fee or wastewater connection charges.
 - (b) The agreement to provide and wastewater utility service to the Blackbeard Sailing Club, Ltd., located in or near Fairfield Harbour, Craven County, North Carolina.
2. With regard to the Oak Bluff Condominiums in Brandywine Bay, Carteret County, North Carolina, which are provided water and wastewater utility service by Carolina Water Service, Inc. of North Carolina (Carolina Water):
 - (a) Carolina Water will continue to operate, maintain, and repair the water and sewer service lines at Oak Bluff Condominiums in the same manner as in the past.
 - (b) Should Carolina Water desire in the future to attempt to modify the responsibility for these service lines, Carolina Water must first file with the Commission a written petition requesting approval and obtain a Commission approval order.

On November 8, 2012, the Applicant and the Public Staff filed a Joint Proposed Order of Corix Utililties (Illinois) LLC and the Public Staff Approving Acquisition of Stock and Requiring Customer Notice (Joint Proposed Order) and the Town of Harrisburg filed its brief.

On November 26, 2012, all parties to the proceeding filed a Revised Joint Proposed Order of Corix Utililties (Illinois) LLC, the Public Staff, Town of Harrisburg and Corolla Light Community Association, Inc. Approving Acquisition of Stock and Requiring Customer Notice (Revised Joint Proposed Order). In the cover letter accompanying the Revised Joint Proposed Order, Corix's counsel explained that the Revised Joint Proposed Order reflected that UI and the Town of Harrisburg had reached an agreement regarding the potential sale of the Huntwick system to the Town and that all parties had now joined in the joint proposed order.

On November 30, 2012, UI and the Town of Harrisburg jointly filed a letter (Letter of Agreement) with the Commission which indicated that UI and the Town of Harrisburg

had reached an agreement to participate in good faith negotiations about the potential sale of the UI sewer system assets serving Huntwick subdivision and that UI and the Town of Harrisburg had also agreed to file progress reports with the Commission regarding the negotiations every six months, with the first report due within six months of the date of the Commission's order in this docket.

On the basis of the application, the Stipulation, the Letter of Agreement, the records of the Commission and the evidence in the record, the Commission makes the following

FINDINGS OF FACT

1. UI owns six water and/or sewer operating subsidiaries in North Carolina subject to the Commission's jurisdiction. These are: Carolina Water Service Inc. of North Carolina; CWS Systems, Inc.; Transylvania Utilities, Inc.; Carolina Trace Utilities, Inc.; Elk River Utilities, Inc.; and Bradfield Farms Water Company. These companies provide service to approximately 35,000 water customers and approximately 20,000 wastewater companies in North Carolina. UI provides water and/or sewer service through approximately 75 subsidiary operating companies in 15 states. UI's operating subsidiaries provide service to approximately 290,000 customer equivalents.

2. Corix is a Delaware limited liability company, all of the outstanding membership interests of which are held indirectly by Corix Infrastructure Inc. (CII). The principal investor in CII is British Columbia Investment Management Corporation (bcIMC). bcIMC is a Canadian investment management company whose clients include public sector pension plans, public bodies, publicly administered trust funds, and government operating funds. Following consummation of the acquisition, CII may cause Corix to merge with and into Hydro Star, thereby eliminating one of the intermediate holding companies through which Corix will hold its indirect interest in UI.

3. It is appropriate for Corix to acquire 100% of the membership interests in Hydro Star according to the Purchase and Sale Agreement between Corix and Highstar Capital Fund II, L.P. and certain of its affiliates dated February 17, 2012 submitted with the application in this docket.

4. Three public witnesses testified with respect to the proposed transaction. Two witnesses testified to their desire that UI sell the 122 customer sewer system serving the Huntwick Subdivision to the Town of Harrisburg. A third public witness from Carolina Trace expressed concerns regarding the impact the proposed transfer would have on the relationship between the utility and the community.

5. The transaction will not require any additional terms, conditions or requirements, and there will be no adverse impacts on retail customers.

6. The transaction will not have a significant direct impact on the operations of the North Carolina subsidiaries of UI and the current level of service will be maintained.

7. Corix is financially fit to indirectly acquire the outstanding stock of Utilities, Inc.

8. The transaction is justified by the public convenience and necessity.

9. The stipulations between the Applicant and the Public Staff submitted in this docket should be approved.

10. The Letter of Agreement between UI and the Town of Harrisburg should be approved.

EVIDENCE AND CONCLUSIONS BASED UPON CUSTOMER TESTIMONY AND THE LETTER OF AGREEMENT

Public witnesses, Perry Rivers from the Huntwick Subdivision and Michael Rose from the Town of Harrisburg, testified regarding their belief that UI should sell the sewer system serving 122 customers in the Huntwick Subdivision to the Town of Harrisburg. Mr. Rivers testified that the Town of Harrisburg had been trying to buy the system for approximately eight years, but had been turned down by UI. Mr. Rivers complained of leaks and problems with a pump station in the community, and testified that rates would be lower if the Town purchased the system.

Mr. Rose, the town administrator for the Town of Harrisburg, testified that the Town has been interested in providing sewer service in the Huntwick service area for years and already provides the water service. Mr. Rose stated that Huntwick was annexed into the corporate limits of the Town in 1997. Mr. Rose testified as to his concern that the sale to Corix would impair or eliminate the potential for the Town to acquire the facilities serving Huntwick.

Mr. Rose testified that based upon the average water consumption of Huntwick customers, Harrisburg's average monthly metered sewer bill for Huntwick customers would be \$23.88 compared to the Carolina Water monthly flat rate of \$40.14. Mr. Rose further testified that if the Huntwick system was acquired by Harrisburg, the Huntwick package wastewater treatment plant would be eliminated and Harrisburg would connect the Huntwick wastewater collection system to the Fuda Creek interceptor, owned and operated by the Water and Sewer Authority of Cabarrus County. He also testified that the citizens residing in Huntwick would be retail sewer customers of Harrisburg and would be provided the same level of service and rate structure as provided to the rest of the citizens within Harrisburg's corporate limits.

On November 30, 2012, UI and the Town of Harrisburg jointly filed a Letter of Agreement with the Commission which indicated that UI and the Town of Harrisburg

had reached an agreement to participate in good faith negotiations about the potential sale of the UI sewer system assets serving Huntwick subdivision and that UI and the Town of Harrisburg had also agreed to file progress reports with the Commission regarding the negotiations every six months, with the first report due within six months of the date of the Commission's order in this docket.

The Commission has stated on a number of prior occasions that it is the Commission's policy to encourage the transfer of investor owned water and/or sewer public utilities to government owned public utilities. Therefore, the Commission, after fully considering the testimony of the parties, the record proper, and the fact that no party to this proceeding has filed an objection to the agreement between UI and the Town of Harrisburg, approves the Letter of Agreement which permits UI and the Town of Harrisburg to negotiate in good faith as to the possible sale of the Huntwick sewer system, and requires UI and the Town of Harrisburg to file progress reports with the Commission regarding the progress made in negotiations every six months, with the first report due within six months from the date of this order. The Commission further finds that such negotiations are in the public interest.

Mr. Vince Roy from Carolina Trace testified about the relationship between the Carolina Trace Homeowners Association and UI and his concern that Corix continue the practice of quarterly meetings and maintain a good relationship with the residents. Mr. Roy also stated his hope that UI and the Town of Sanford would finalize their negotiations to allow UI to purchase 100% of their water from Sanford. Mr. Lubertozi testified that UI would continue quarterly meetings with the Carolina Trace HOA and they would maintain the good relationship between UI operations staff and the community. The Commission encourages Corix to take the necessary steps to continue positive relationships with the residents of Carolina Trace and all customers, and to complete its negotiations with the Town of Sanford.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Based upon the foregoing, the Commission is of the opinion that Corix's request to acquire 100% of the membership interest of Hydro Star is in the public interest and is approved, that the stipulations between the Applicant and the Public Staff, and that the Letter of Agreement between the Applicant and the Town of Harrisburg should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. The application for Corix to acquire 100% of the membership interests in Hydro Star as described herein and in the application is approved upon the following conditions, and that UI and Corix are hereby ordered to comply with such conditions:

- (a) All records of UI will be physically available as required by North Carolina law.
- (b) Corix will comply with any Commission requirement that UI personnel familiar with the company records be reasonably available in North Carolina.
- (c) Corix and/or UI will not seek recovery of losses or subsidization of non-utility subsidiaries or affiliates of Corix or UI from North Carolina customers.
- (d) The officers and management of UI will have reasonable authority to commit UI, and its North Carolina regulated subsidiaries, on matters considered jurisdictional to the Commission.
- (e) Corix and UI will seek Commission permission before a corporate restructuring of UI.
- (f) No franchise of UI, or any of its North Carolina regulated subsidiaries, now existing or hereafter issued by the Commission under the provisions of the Public Utilities Act of North Carolina, shall be sold, assigned, pledged, or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination, including Corix and/or UI, affecting UI, and/or any of its North Carolina regulated subsidiaries, be made through acquisition of control by stock purchase or otherwise, except after application to and written approval by the Commission.
- (g) Corix and UI agree to be bound by the North Carolina law and Commission Orders and rules and regulations as they relate to UI's North Carolina regulated subsidiaries.
- (h) Corix and UI will seek Commission permission before a corporate restructuring of Corix if it could have an effect on the rates or service of UI's subsidiaries in North Carolina.
- (i) UI and Corix agree that any acquisition of Corix, or transfer of control of UI, through an acquisition is subject to Commission approval pursuant to North Carolina General Statute § 62-111. Any such transfer without such approval is forbidden and void.
- (j) All costs of the acquisition incurred by Corix and/or UI, including compensation costs, and all direct and indirect corporate cost increases for UI, or any of its subsidiaries will be recorded to account number 426 (Miscellaneous Non Utility Expense) and shall

be treated for accounting and ratemaking purposes so that they do not affect the water and sewer rates and charges of UI's subsidiaries. For purposes of this agreement, the term "corporate cost increases" is defined as costs in excess of the level that UI would have incurred using prudent business judgment had the acquisition not occurred.

- (k) All costs of the 2002 merger approved by the Commission in Docket No. W-1000, Sub 9, incurred by nv Nuon and/or UI, and the 2006 merger approved by the Commission in Docket No. W-1000, Sub 11, incurred by Hydro Star and/or UI, including compensation costs, and all direct and indirect corporate cost increases for UI or any of its subsidiaries will be recorded to account number 426 (Miscellaneous Non Utility Expense) and shall be treated for accounting and ratemaking purposes so that they do not affect the water and sewer rates and charges of UI's subsidiaries. For purposes of this agreement, the term "corporate cost increases" is defined as costs in excess of the level that UI would have incurred using prudent business judgment had the merger not occurred.
- (l) Corix and UI and all affiliates shall take all such actions as may be reasonably necessary and appropriate to hold North Carolina ratepayers harmless from rate increases, foregone opportunities for rate decreases, and/or any other adverse effects of the transfer.
- (m) Future payments to officers for annual bonuses, incentive bonuses, long-term incentive bonuses, and any other bonuses made in relation to this acquisition will be excluded from UI's utility accounts and shall be treated for accounting and ratemaking purposes so that they do not affect the water and sewer rates and charges of UI's subsidiaries.
- (n) Base salaries, compensation payments, annual bonuses, incentive bonuses, long-term incentive bonuses, any other bonuses, and any incentive compensation other than those listed in Item m above shall be subject to review and ratemaking adjustments in future rate proceedings for UI, where UI holds a Commission-issued certificate, and for its North Carolina regulated subsidiaries (including areas included within the certificate of such subsidiaries through operation of G.S. 62-110(a)). The burden of proof on each of these issues shall be upon UI, and its North Carolina regulated subsidiaries.
- (o) Any acquisition adjustment that results from the acquisition will be excluded from UI's utility accounts and treated for accounting and

ratemaking purposes so that it does not affect water and sewer rates and charges of UI's subsidiaries.

- (p) UI and its North Carolina regulated subsidiaries shall each maintain its books and records so that its equity capital is recorded pursuant to the respective NARUC Uniform System of Accounts for Class A Water and Class A Wastewater Utilities, as revised in 1996, and all subsequent revisions.
- (q) Corix shall provide UI, to the extent it holds certificates issued by the Commission, and its North Carolina regulated subsidiaries with sufficient access to equity and debt capital to enable UI and its North Carolina regulated subsidiaries to adequately fund and maintain their current and future water and wastewater systems, and otherwise meet the service needs of their customers at a reasonable cost. The timing and quantity of any capital expenditures or discrete capital infusion shall be determined by the Applicant's best judgment consistent with the requirement to maintain the current future water and wastewater systems and otherwise meet the service needs of the customers at a reasonable cost.
- (r) The books and records of Corix and any other affiliated companies will be made available for inspection as required under North Carolina General Statute § 62-51.
- (s) UI's North Carolina operating subsidiaries and UI, where they hold certificates from the Commission, shall comply with the requirements of G.S. 62-153 with respect to the procurement of goods or services from Corix or other affiliated or subsidiary companies or entities. Whenever UI's North Carolina operating subsidiaries and UI, where they hold certificates from the Commission, seek to recover through rates the costs of goods or services procured from Corix or other affiliated or subsidiary companies or entities, or whenever the Commission requires it, UI shall have the burden of persuasion and proof as to the reasonableness of such costs in accordance with North Carolina law.
- (t) UI's operations and the operations of UI's North Carolina subsidiaries are currently generally in compliance with applicable environmental regulations. In cases where UI's and/or its North Carolina subsidiaries are involved in environmental compliance issues, UI and Corix agree to continue to cooperate with all regulatory agencies in addressing any outstanding compliance

issues, to the satisfaction of the environmental regulatory agencies and the Public Staff.

- (u) UI shall maintain its current North Carolina management.
- (v) UI, through the appropriate operating North Carolina subsidiaries, agrees to continue to be responsive to customer inquiries regarding the adequacy of service, billing issues, and compliance issues, and to maintain customer access to compliance, billing, and other operational information.
- (w) UI, through the appropriate operating North Carolina subsidiaries, will continue to take steps designed to implement and further its commitment to provide superior service to North Carolina water and sewer customers.
- (x) UI and its wholly owned subsidiaries in North Carolina shall continue to honor their prior existing contracts including but not limited to:
 - (1) Contract dated April 26, 1985, executed by the prior utility Mercer Environmental Corporation which includes providing water and wastewater service to Aragona Village in Onslow County, North Carolina, without charging any tap on fee or wastewater connection charges.
 - (2) The agreement to provide and wastewater utility service to the Blackbeard Sailing Club, Ltd., located in or near Fairfield Harbour, Craven County, North Carolina.
- (y) With regard to the Oak Bluff Condominiums in Brandywine Bay, Carteret County, North Carolina, which are provided water and wastewater utility service by Carolina Water:
 - (1) Carolina Water will continue to operate, maintain, and repair the water and sewer service lines at Oak Bluff Condominiums in the same manner as in the past.
 - (2) Should Carolina Water desire in the future to attempt to modify the responsibility for these service lines, Carolina Water must first file with the Commission a written petition requesting approval and obtain a Commission approval order.

2. That the joint Stipulation of the Applicant and the Public Staff signed and filed with the Commission on September 10, 2012 and the additional stipulations entered as an exhibit at the September 25, 2012 hearing, are hereby approved.

3. The November 30, 2012, Letter of Agreement between UI and the Town of Harrisburg is hereby approved.

4. That UI and the Town of Harrisburg shall participate in good faith negotiations concerning the possible sale of the Huntwick sewer system, and UI and Harrisburg shall file with the Commission a report concerning such negotiations every six months, with the first such report due within six months of the date of the Order approving the stock transfer in this docket.

5. That UI shall file with the Commission a pre-closing and post-closing balance sheet and any journal entries made to record the transaction and any related transactions within ninety day of closing.

6. That UI shall provide written notification to the Commission within ten days after the transfer has been completed.

7. That the Notice to Customers, attached as Appendix A, shall be mailed with sufficient postage to all customers of UI's North Carolina operating subsidiaries in the next regular billing cycle, and the Applicant shall submit to the Commission the attached Certificate of Service properly notarized within forty-five days of this Order.

ISSUED BY ORDER OF THE COMMISSION

This the 7th day of December, 2012.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Chief Clerk

Lh120712.01

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-1000, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Application of Corix Utilities (Illinois) LLC to)	NOTICE TO CUSTOMERS
Indirectly Acquire the Outstanding Stock of)	OF TRANSFER
Utilities, Inc.)	

BY THE COMMISSION: Notice is given that the North Carolina Utilities Commission has approved the application of Corix Utilities (Illinois) LLC (Corix) to indirectly acquire the outstanding stock of Utilities, Inc. pursuant to a Purchase and Sale Agreement between Corix and Highstar Capital Fund II, L.P. and certain of its affiliates. Utilities, Inc. owns six water and/or sewer operating subsidiaries in North Carolina subject to the Commission's jurisdiction: Bradfield Farms Water Company, Carolina Trace Utilities, Inc., Carolina Water Service, Inc. of North Carolina, CWS Systems, Inc., Elk River Utilities, Inc. and Transylvania Utilities, Inc.

There are no changes in the current rates associated with this transfer. There are no changes in the mailing addresses or telephone numbers of the utility companies. If there are any future changes in telephone numbers or mailing addresses, customers will be notified.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of December, 2012.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Chief Clerk

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Notice to Customers issued by the North Carolina Utilities Commission in Docket No. W-1000, Sub 14, and the Notice was mailed or hand delivered by the date specified in the Order.

This the ____ day of _____, 2012.

By: _____
Signature

Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Notice to Customers was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-1000, Sub 14.

Witness my hand and notarial seal, this the ____ day of _____, 2012.

Notary Public

Address

(SEAL) My Commission Expires: _____
Date

RECEIVED

DEC 13 2012

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

PUBLIC SERVICE
COMMISSION

Public Meeting held December 5, 2012

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner
James H. Cawley
Pamela A. Witmer

Joint Application of Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, Utilities, Inc.—Westgate, Utilities, Inc., Highstar Capital Fund II, L.P. and Corix Utilities (Illinois) LLC for Approval for a Transfer of Membership Interests Resulting In a Change of Control of Utilities, Inc.'s Pennsylvania Subsidiaries	:	A-2012-2299431
	:	A-2012-2299433
	:	A-2012-2299434
	:	A-2012-2299394
	:	P-2012-2299711
	:	P-2012-2299712
	:	P-2012-2299713
	:	P-2012-2299714

ORDER

BY THE COMMISSION:

We adopt as our action the Recommended Decision of Administrative Law Judge Joel H. Cheskis, dated October 3, 2012;

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Approval of Settlement between Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, Utilities, Inc. – Westgate, Utilities, Inc., Highstar Capital Fund II L.P., Corix Utilities (Illinois) LLC and the Office of Consumer Advocate at

Docket Numbers A-2012-2299431, A-2012-2299433, A-2012-2299434 and A-2012-2299394, dated September 7, 2012, is approved without modification, as being in the public interest.

2. That the Stipulation for Admission of Evidence between Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, Utilities, Inc. – Westgate, Utilities, Inc., Highstar Capital Fund II L.P., Corix Utilities (Illinois) LLC and the Office of Consumer Advocate at Docket Numbers A-2012-2299431, A-2012-2299433, A-2012-2299434 and A-2012-2299394, dated September 7, 2012, is granted.

3. That the record of this proceeding be reopened for the limited purpose of admitting the following documents into the record of this proceeding:

- a. The Joint Application for Approval of a Change of Control filed April 13, 2012 and docketed by the Commission Secretary at A-2012-2299394, A-2012-2299431, A-2012-2299433 and A-2012-2299434.
- b. Highly Confidential Application Exhibit A - Purchase and Sale Agreement with Disclosure Schedule, dated February 17, 2012.
- c. Highly Confidential Application Exhibit B - Utilities, Inc. and subsidiaries Consolidated Financial Statements for 2011 and 2010.
- d. Highly Confidential Application Exhibit C - Corix Infrastructure, Inc. Consolidated Financial Statements for 2011.
- e. Public Exhibit D - Pre and Post-Transaction Organizational Charts for HydroStar, Utilities, Inc. and Corix.
- f. Public Exhibit E - Overview of Corix Group dated March 2012.
- g. Responses to OCA Set I Interrogatories numbers 4, 6 and 8, dated June 26, 2012.

4. That two copies of each document listed in paragraph 3 above shall be filed with the Secretary's Bureau of the Commission, unless previously filed.

5. That the Petitions for Protective Order at Docket Numbers P-2012-2299711, P-2012-2299712, P-2012-2299713 and P-2012-2299714, dated April 13, 2012 are hereby consolidated with the Applications at Docket Numbers A-2012-2299431, A-2012-2299433, A-2012-2299434 and A-2012-2299394, dated April 13, 2012, and are approved.

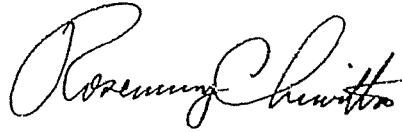
6. That the Joint Application of Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, Utilities, Inc. – Westgate, Utilities, Inc., Highstar Capital Fund II L.P. and Corix Utilities (Illinois) LLC for Approval for a Transfer of Membership Interests Resulting In A Change of Utilities, Inc.'s Pennsylvania Subsidiaries at Docket Numbers A-2012-2299431, A-2012-2299433, A-2012-2299434 and A-2012-2299394, dated April 13, 2012, is approved, consistent with the Settlement dated September 7, 2012 approved in paragraph 1 above.

7. That all required certificates of public convenience be issued evidencing the Pennsylvania Public Utility Commission's approval of the Joint Application of Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, Utilities, Inc. – Westgate, Utilities, Inc., Highstar Capital Fund II L.P. and Corix Utilities (Illinois) LLC for Approval for a Transfer of Membership Interests Resulting In A Change of Utilities, Inc.'s Pennsylvania Subsidiaries, dated April 13, 2012, as modified by the Joint Petition for Approval of Settlement between Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, Utilities, Inc. – Westgate, Utilities, Inc., Highstar Capital Fund II L.P., Corix Utilities (Illinois) LLC and the Office of Consumer Advocate, dated September 7, 2012, at Docket Numbers A-2012-2299431, A-2012-2299433, A-2012-2299434 and A-2012-2299394.

8. That the Protest of the Office of Consumer Advocate dated May 14, 2012 is dismissed.

9. That this matter at Docket Numbers A-2012-2299431, A-2012-2299433, A-2012-2299434, A-2012-2299394, P-2012-2299711, P-2012-2299712, P-2012-2299713 and P-2012-2299714 be marked closed.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 5, 2012

ORDER ENTERED: December 5, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Penn Estates Utilities,	:	A-2012-2299431
Inc., Utilities, Inc. of Pennsylvania,	:	A-2012-2299433
Utilities, Inc.—Westgate, Utilities, Inc.,	:	A-2012-2299434
Highstar Capital Fund II, L.P. and Corix	:	A-2012-2299394
Utilities (Illinois) LLC for Approval for a	:	P-2012-2299711
Transfer of Membership Interests Resulting	:	P-2012-2299712
In a Change of Control of Utilities, Inc.’s	:	P-2012-2299713
Pennsylvania Subsidiaries	:	P-2012-2299714

RECOMMENDED DECISION

Before
Joel H. Cheskis
Administrative Law Judge

HISTORY OF THE PROCEEDING

On April 13, 2012, Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, Utilities, Inc. – Westgate, Utilities, Inc., Highstar Capital Fund II, L.P. and Corix Utilities (Illinois) LLC (collectively referred to as “the Companies”) filed a Joint Application with the Pennsylvania Public Utility Commission (Commission) seeking the approval of a change of control of Utilities, Inc. and its Pennsylvania subsidiaries. The Joint Application was filed pursuant to Section 1102(a)(3) of the Public Utility Code. 66 Pa. C.S. § 1102(a)(3). In the Joint Application, the Companies requested all necessary approvals from the Commission authorizing the transfer by sale of Highstar’s membership interests in HydroStar, LLC to Corix. As a result, HydroStar will indirectly acquire 100% of the ownership interests in Utilities, Inc. and therefore indirectly hold 100% of the ownership interests in Penn Estates, Utilities, Inc. of Pennsylvania and Westgate. The Companies further stated that the proposed transaction results in a change of controlling interest as defined in the Commission’s Policy Statement at Section 69.901 of the Commission’s regulations. 52 Pa. Code § 69.901. Notice of the Joint Application was published

in the Pennsylvania Bulletin on April 28, 2012. 42 Pa.B. 2356.

Also on April 13, 2012, the Companies filed Petitions for Protective Orders requesting that the Commission grant a protective order restricting the disclosure of proprietary and highly confidential information contained in exhibits to the Joint Application. The Petitions were filed pursuant to Section 5.423(b) of the Commission's regulations. 52 Pa. Code §5.423(b).

On May 14, 2012, the Office of Consumer Advocate (OCA) filed a Protest. The OCA indicated that it filed its Protest in order to ensure that the Joint Application is approved only if (1) it is found to be in the public interest, (2) it provides substantial, affirmative public benefits, and (3) is in accordance with the Public Utility Code. No other Protests were received in response to publication of the Joint Application in the Pennsylvania Bulletin. Subsequently, the Joint Application was referred to the Office of Administrative Law Judge for hearing.

By Notice dated August 15, 2012, the Commission established an Initial Prehearing Conference for Wednesday, September 5, 2012, at 10:00 a.m. in Hearing Room 2 of the Commonwealth Keystone Building in Harrisburg. I was assigned as the Presiding Administrative Law Judge. On August 17, 2012, a Prehearing Conference Order was issued. In that Order, it was noted that various procedural issues would be discussed during the Prehearing Conference and Prehearing Conference Memorandum were to be filed by August 31, 2012, by any party wishing to participate in the Prehearing Conference. The Prehearing Conference Order also discussed other procedural issues that would apply to the proceeding.

On August 28, 2012, counsel for the Companies indicated that an agreement in principle had been reached on all contested matters. On August 29, 2012, a conference call was held involving me, the Companies and the OCA. During the conference call, it was agreed that the Prehearing Conference scheduled for September 5, 2012 would be cancelled and that the requested Prehearing Memoranda, due August 31, 2012, would no longer be required. It was also agreed that the parties would submit the settlement, along with Statements in Support of the Settlement and a Joint Motion seeking the admission of evidence in support of the settlement, by September 7, 2012.

On September 7, 2012, the Companies filed a Joint Petition for Approval of Settlement (Settlement) and a Stipulation for Admission of Evidence (Stipulation). The Settlement was signed by counsel for the Companies and counsel for the OCA. Attached to the Settlement were Statements in Support of the Settlement from both the Companies and the OCA. The Stipulation was also signed by counsel for the Companies and counsel for the OCA. In the Stipulation, the parties requested that seven documents be admitted into the record. Those documents are: 1) the Joint Application that was filed with the Commission on April 13, 2012; 2) the five Exhibits A through E that accompanied the Joint Application, three of which were marked as Highly Confidential; and 3) responses to three interrogatories. The parties also attached, for informational purposes, an Order of the Kentucky Public Service Commission dated August 13, 2012 approving the transaction. The parties indicated that the Stipulation was subject to the approval of the Settlement by the Commission.

The record in this proceeding closed on September 7, 2012, the date the parties filed the Settlement and the Stipulation. This Recommended Decision will: 1) consolidate, and grant, the Petitions for Protective Order with the Joint Application; 2) admit the Stipulation into the record of this proceeding; and 3) recommend that the Settlement be approved without modification.

FINDINGS OF FACT

1. Penn Estates Utilities, Inc. is a Pennsylvania public utility that provides water and wastewater services to approximately 1,600 customers and approximately 50 availability service customers in its authorized service territory in portions of Stroud and Pocono Townships in Monroe County, Pennsylvania and received its authority from the Commission by final order and certificate of public convenience issued on February 10, 1997 at Docket Numbers A-210072 and A-230063. Joint Application at para. 2.

2. Utilities, Inc. of Pennsylvania is a Pennsylvania public utility that provides wastewater service to approximately 2,300 customers and two elementary schools in its

authorized service territory in portions of West Bradford Township in Chester County, Pennsylvania and received its authority from the Commission by order and certificate of public convenience issued on August 26, 1992 at Docket Number A-230013. Joint Application at para. 3.

3. Utilities, Inc. - Westgate is a Pennsylvania public utility that provides water service to approximately 800 residential and commercial customers in its authorized service territory adjacent to Bethlehem, Pennsylvania and received its authority from the Commission by order and certificate of public convenience issued on June 21, 2001 at Docket Number A-210093. Joint Application at para. 4.

4. Highstar owns all of the membership interests in Hydro Star which, through its wholly owned subsidiary, Hydro Star Holdings Corporation, is the sole shareholder of Utilities, Inc. Joint Application at para. 5. Utilities, Inc., in turn, owns Penn Estates, Utilities, Inc. of Pennsylvania and Westgate. Id.

5. Corix is a limited liability company organized under the laws of Delaware. Corix is indirectly owned by Corix Infrastructure Inc., which is a privately held corporation principally owned by certain affiliates of British Columbia Investment Management Corporation and CAI Capital Partners. The Corix Group is engaged in the business of water, wastewater and energy utilities and utility related products and services. Joint Application at para. 6.

6. Pursuant to a Purchase and Sale Agreement, dated February 17, 2012, Corix will acquire 100% of the membership interests in Hydro Star from Highstar. Joint Application at para. 7.

7. Hydro Star, through Hydro Star Holdings Corporation, owns 100% of Utilities, Inc., which, together with its subsidiaries, owns and operates a portfolio of regulated utilities in 15 states. Joint Application at para. 7.

8. All of the outstanding equity interests in Penn Estates, Utilities, Inc. of Pennsylvania and Westgate are held directly by Utilities, Inc. and indirectly by Hydro Star. Joint Application at para. 7.

9. Upon the consummation of the transactions contemplated by the Agreement, Corix, through its proposed acquisition of Hydro Star, will indirectly acquire 100% of the ownership interests in Utilities, Inc. and, as a result, indirectly hold 100% of the ownership interests in Penn Estates, Utilities, Inc. of Pennsylvania and Westgate. Joint Application at para. 7.

10. Utilities, Inc. is an Illinois corporation and one of the largest privately owned water utility and water service companies in the United States, providing water and wastewater services through its subsidiaries to approximately 290,000 customer equivalents in 15 states, including Pennsylvania. Joint Application at para. 9.

11. Ensuring ready access to capital funds to support growth and the continued maintenance of critical infrastructure is increasingly important in the current turbulent financial markets. Joint Application at para. 11.

12. Pursuant to the Purchase and Sale Agreement, Corix will acquire 100% of the membership interests of Hydro Star, and Utilities, Inc. will thereby become an indirect, wholly-owned subsidiary of Corix. As a result, Penn Estates, Utilities, Inc. of Pennsylvania and Westgate will also become indirect, wholly-owned subsidiaries of Corix. Joint Application at para. 12.

13. Approval of the transaction identified in this Application is expected to result in increased financial resources available to Utilities, Inc, which is expected to result in increased resources being available to Penn Estates, Utilities, Inc. of Pennsylvania and Westgate. Joint Application at para. 14.

14. Following consummation of the proposed transaction, Penn Estates, Utilities, Inc. of Pennsylvania and Westgate 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. Joint Application at para. 15.

15. It is anticipated that following the proposed transaction, Penn Estates', Utilities, Inc. of Pennsylvania's and Westgate's current local management teams, system operators and customer service personnel will all remain with their respective companies. Joint Application at para. 17.

16. Penn Estates, Utilities, Inc. of Pennsylvania and Westgate will continue to provide reliable service to their Pennsylvania customers at current tariff rates after the Commission's approval of the proposed transaction. Joint Application at para. 17.

17. The Corix Group plans to maintain and enhance its local presence in those communities in which Utilities, Inc., Penn Estates, Utilities, Inc. of Pennsylvania and Westgate currently have operations. Joint Application at para. 27.

18. Following the proposed transaction, Penn Estates, Utilities, Inc. of Pennsylvania and Westgate will not propose capital structures for ratemaking purposes that are outside the range of capital structures employed by comparable public utilities for the purpose of affecting tax liability. Joint Application at para. 30.

19. The Commission's approval of the Settlement submitted September 7, 2012, without modification, is in the public interest.

DISCUSSION

Pursuant to a Purchase and Sale Agreement dated February 17, 2012, Corix will acquire 100% of the membership interests of Hydro Star from Highstar. The Application states

that Hydro Star, through Hydro Star Holdings Corporation, owns 100% of Utilities, Inc. which, together with its subsidiaries, owns and operates a portfolio of regulated utilities in fifteen (15) states. The Agreement was attached to the Joint Application. The Joint Application further indicates that all of the outstanding equity interests in Penn Estates, Utilities, Inc. of Pennsylvania and Westgate are held directly by Utilities, Inc. and indirectly by Hydro Star and that, upon consummation of the transactions contemplated by the Agreement, Corix, through its proposed acquisition of Hydro Star, will indirectly acquire 100% of the ownership interest in Utilities, Inc., and as a result, indirectly hold 100% of the ownership interests of Penn Estates, Utilities, Inc. of Pennsylvania and Westgate.

The Joint Application further indicated that the parties intend to consummate the transaction as soon as practicable after expiration or termination of the Hart-Scott-Rodino waiting period, receipt of all other required government and/or regulatory permits and approvals and the satisfaction or waiver of all other requisite conditions precedent. The Joint Application provided a description of the parties, a discussion of the public interest and an explanation of the Companies' considerations. The Joint Application requested that the Commission issue Certificates of Public Convenience evidencing the Commission's approval of the indirect change of control described in the Joint Application and grant all other approvals as may be appropriate and necessary to carry out the proposed transaction.

In its Protest, the OCA stated that Section 1102(a)(3) of the Public Utility Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to a public utility transferring title to, or the possession or use of, any tangible or intangible property used or useful in the public service. The OCA also noted in its Protest that the Public Utility Code further requires that a certificate shall only be granted upon findings that the granting of such a certificate is "necessary or proper for the service, accommodation, convenience or safety of the public" and that Section 1103 explicitly allows the Commission to impose conditions on the issuance of a Certificate of Public Convenience. As such, the OCA notes that the Joint Application provides that the transaction will "not result in any negative or immaterial impact of any kind" and filed its Protest to ensure that the change of control will

provide affirmative benefits to the customers of Penn Estates, Utilities, Inc. of Pennsylvania and Westgate.

Section 1103(a) of the Public Utility Code provides:

(a) General Rule. -- Every application for a certificate of public convenience shall be made to the commission in writing, be verified by oath or affirmation, and be in such form, and contain such information, as the commission may require by its regulations. A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable. In every case, the commission shall make a finding or determination in writing, stating whether or not its approval is granted. Any holder of a certificate of public convenience, exercising the authority conferred by such certificate, shall be deemed to have waived any and all objections to the terms and conditions of such certificate.

66 Pa. C.S. §1103(a); *see also*, City of York v. Pa. PUC, 449 Pa. 136, 295 A.2d 825 (1972) (the Pennsylvania Supreme Court held that a proponent of a merger has the burden of proving by a preponderance of the evidence that the merger is in the public interest because it will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way); Middletown Township v. Pa. PUC, 482 A.2d 674, 682 (Pa. Commw. 1984) (the benefits and the detriments of the merger will be measured under the public interest test as they impact on “all affected parties”). Furthermore, by imposing conditions, the Commission can approve a merger that would not otherwise meet the legal standards. *See*, Application for Authority to Transfer Control of Trigen-Philadelphia Energy Corporation, A-130375F5000 (April 7, 2005) at 5.

In addition, the Commission’s Policy Statement regarding Utility Stock Transfer Under 66 Pa. C.S. § 1103(a)(3) provides guidance regarding when the Commission has jurisdiction over a transaction resulting in a new controlling interest, including defining what is a controlling interest. 52 Pa. Code § 69.901.

In this case, however, the Companies and the OCA have reached a settlement. Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. Furthermore, the focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. Pa. P.U.C., et al. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al.*, Opinion and Order (entered July 14, 2011)(Lancaster). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. *Id.*; *citing*, Warner v. GTE North, Inc., Docket No. C-00902815, Opinion and Order (entered April 1, 1996)(Warner); Pa. P.U.C. v. CS Water and Sewer Associates, 74 PA PUC 767 (1991).

In addition, the decision of the Commission must be supported by substantial evidence. 2 Pa. C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. P.U.C., 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Commonwealth Ct. 23, 480 A.2d 382 (1984). In support of the Settlement, the parties have stipulated the following exhibits be admitted into the record:

- a. The Joint Application for Approval of a Change of Control filed April 13, 2012 and docketed by the Commission Secretary at A-2012-2299394, A-2012-2299431, A-2012-2299433 and A-2012-2299434.
- b. Highly Confidential Application Exhibit A - Purchase and Sale Agreement with Disclosure Schedule, dated February 17, 2012.

- c. Highly Confidential Application Exhibit B - Utilities, Inc. and subsidiaries Consolidated Financial Statements for 2011 and 2010.
- d. Highly Confidential Application Exhibit C - Corix Infrastructure, Inc. Consolidated Financial Statements for 2011.
- e. Public Exhibit D - Pre and Post-Transaction Organizational Charts for HydroStar, Utilities, Inc. and Corix.
- f. Public Exhibit E - Overview of Corix Group dated March 2012.
- g. Responses to OCA Set I Interrogatories Numbers 4, 6 and 8, dated June 26, 2012.

The parties indicated in the Stipulation that admission by stipulation of these documents is subject to the approval of the Settlement by the Commission. The parties further reserved their right to submit further testimony and to cross-examine witnesses in the event the Settlement is not approved by the Commission.

Finally, with regard to the Petitions for Protective Order, the Commission's Rules of Practice and Procedure permit the Commission to issue protective orders limiting the availability of certain proprietary or confidential information. 52 Pa. Code §§ 5.362 and 5.423. The party seeking the protective order has the burden to establish that the potential harm to the party of providing the information would be substantial and the harm to the party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process. Petition for Protective Order of GTE North Inc., 1996 Pa PUC LEXIS 95, Docket No. G-00940402, (Order entered August 8, 1996); ITT Communications Services' Petition for a Protective Order, 1991 Pa PUC LEXIS 193, Docket No. R-912017, (Order entered November 5, 1991).

In considering whether to issue a protective order, the Commission, pursuant to Section 5.423(a), should consider the following factors: (1) The extent to which the disclosure would cause unfair economic or competitive damage; (2) The extent to which the information is known by others and used in similar activities; (3) The worth or value of the information to

the party and to the party's competitors; (4) The degree of difficulty and cost of developing the information; and (5) Other statutes or regulations dealing specifically with disclosure of the information. 52 Pa. Code § 5.423(a).

As discussed further below, the Settlement, which is unopposed by any party, is in the public interest and will be recommended for approval without modification.

TERMS OF SETTLEMENT

As stated in the Settlement, the Companies and the OCA have agreed to the following terms to resolve this matter:

- A. The Commission will issue certificates of public convenience pursuant to Section 1102(a)(3) of the Public Utility Code, 66 Pa. C.S. § 1102(a)(3) evidencing the Commission's approval of the transfer by sale of Highstar's membership interests in Hydro Star LLC to Corix and grant all other approvals as may be appropriate, customary or necessary to carry out the proposed transaction set forth in the Joint Application.
- B. PEUI-Sewer, UIP and Westgate will not file for an increase in their existing base rates pursuant to Section 1308 of the Public Utility Code, 66 Pa. C.S. § 1308, for a period of six months following the Commission's entry of an order approving this Joint Petition for Approval of Settlement unless there are substantial changes in regulation or Federal tax rates or policy. This provision, however, will not apply to any Purchased Water Adjustment Charge filed by Westgate as permitted in the Commission's Order in *Public Utility Commission v. Utilities, Inc. - Westgate*, Commission Dkt. No. R-2012-2299663 (Order entered June 21, 2012).
- C. PEUI, UIP and Westgate shall maintain a meaningful process to monitor all allocations from corporate parents or affiliates to ensure the appropriateness of the allocations, and will request Commission approval of any new affiliated interest agreements pursuant to Chapter 21 of the Public Utility Code;
- D. Neither Corix nor Utilities, Inc. shall allocate to, or seek recovery from PEUI, UIP or Westgate or its customers any early termination costs, change-in-control payments, or retention bonuses paid to a

Hydro Star or Utilities, Inc. employee as a result of the proposed transaction;

- E. PEUI, UIP or Westgate will not record any portion of the payment for Hydro Star membership interests or stock on its books;
- F. Neither Corix or Utilities, Inc. shall push down to PEUI, UIP or Westgate any transaction-related costs or any premium that Corix may pay for Hydro Star membership interests;
- G. PEUI, UIP or Westgate shall not directly or indirectly incur any additional costs, liabilities, or obligations in conjunction with Corix's acquisition of Hydro Star, however, additional costs, liabilities or obligations related to conditions required by the Commission may be incurred;
- H. PEUI, UIP or Westgate shall not incur any additional indebtedness, issue any additional securities, or pledge any assets to finance any part of the acquisition of Hydro Star;
- I. PEUI, UIP or Westgate shall not seek recovery from their customers for any transaction-related costs or any premium that Corix may pay for Hydro Star membership interests or stock;
- J. For two years from the date of Corix's acquisition of Hydro Star's membership interests or stock, Corix, Utilities, Inc. or PEUI, UIP or Westgate shall notify the Commission and the Office of Consumer Advocate in writing within 10 days of any changes in Utilities' Inc.'s or PEUI, UIP or Westgate's corporate officers and management personnel, and
- K. Within 10 days of any public announcement of any acquisition by Corix that will affect the rates of or service provided by PEUI, UIP or Westgate, Corix, Utilities, Inc. or PEUI, UIP or Westgate shall advise the Commission and the Office of Consumer Advocate of such acquisition.

Settlement at 4-6. As discussed further below, the terms of the Settlement can essentially be categorized into a rate stay-out, monitoring, notice and protection from indebtedness.

In addition, the Settlement provides the standard terms and conditions found in most settlements. The Settlement provides:

18. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Settlement without modification. If the Commission modifies the Settlement, any Joint Petitioner may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. The election to withdraw must be made in writing, filed with the Commission Secretary, and served upon all signatory parties within five (5) business days after the entry of an Order modifying the Settlement.

19. This Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceeding. If the Commission does not approve this Settlement and the proceedings continue, the Joint Petitioners reserve their respective procedural rights to evidentiary hearings, submission of additional testimony and exhibits, cross-examination of witnesses, briefing and argument of all respective positions. This Settlement is made without any admission against, or prejudice to, any position that any Joint Petitioner may adopt in the event of a subsequent litigation of these proceedings, or in other proceedings.

20. The Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any Joint Petitioner's position with respect to any of the issues raised in this proceeding. This Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement. If the Presiding Officer adopts this Settlement without modification, the Joint Petitioners waive their rights to file exceptions.

Id. at 7-8.

PUBLIC INTEREST

As noted above, it is the policy of the Commission to encourage settlements. 52 Pa. Code § 5.231(a). The benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Lancaster, Warner, supra. Both parties aver in their Statements in Support of the Settlement, which were filed in conjunction with the Settlement, that the Settlement is in the public interest and should be approved as filed. The Settlement, in particular, notes that settlements allow cases to be

resolved more quickly with less expense and allow the Commission and parties to conserve their resources. Settlement at 6.

In its Statement in Support of the Settlement, the Companies identify several reasons why it believes that the Settlement is in the public interest. First, the Companies note that approval of the transaction will result in increased financial resources available to Utilities, Inc. which will provide Penn Estates, Utilities, Inc. of Pennsylvania and Westgate with greater access to capital on favorable financial terms. Second, the Companies note that the transaction will also result in increased expertise and industry experience being available to the Pennsylvania companies, including innovative technologies, operating tools and regulatory resources required to develop sustainable multi-utility services. Third, the Companies state that the transaction will not impact rates, services or employment in Pennsylvania and that the transaction will be completely seamless to the Pennsylvania customers. Fourth, the Companies state that they will comply with the financial, corporate governance and operational requirements previously adopted by the Commission in a 2006 Order involving Penn Estates.

The Companies further identify as settlement conditions that are in the public interest the fact that several of the Pennsylvania affiliates agreed to not file for an increase in their existing base rates for a period of six months following the Commission's entry of an order approving the settlement, as well as various monitoring and notice provisions that provide additional customer benefits and protections. The Companies also stated that a public benefit from the Settlement is a prohibition on the payment transaction related costs or premiums by Pennsylvania customers.

In its Statement in Support of the Settlement, the OCA notes that the Settlement is in the public interest because it prohibits three of the Pennsylvania affiliated companies from seeking a general rate increase for six months following entry of a Commission order approving the change in control. The OCA further notes that the Settlement also provides a meaningful process under which the Pennsylvania utilities and the OCA will monitor all allocations from corporate parents or affiliates to ensure appropriateness of the allocations and that the Settlement also makes clear that Pennsylvania ratepayers will not be charged any costs or incur any

indebtedness related to the change in control. The OCA also notes as public benefits that additional notice and monitoring requirements are contained in the Settlement that provide additional benefits and protections for consumers.

Of note, the OCA provides in its Statement in Support of the Settlement that the terms and conditions included in the Settlement address the issue it raised in its Protest – that the transaction be approved only if it is found to provide substantial, affirmative benefits to the ratepayers. The OCA states that “the proposed Settlement addresses this issue by providing additional information about the transaction and commitments by the Applications to satisfy the legal standards for Commission approval.” The OCA concludes: “based on the OCA’s analysis of the Joint Applicant’s filing taken in combination with the additional information and commitments in the Settlement and attached to the Stipulation, the proposed change in control will provide affirmative benefits to ratepayers.”

I find the Settlement to be in the public interest and recommend it be approved because the transaction, coupled with the conditions agreed to in the Settlement, satisfy applicable legal standards for approval in Pennsylvania.

Most notably, the Companies have agreed that Penn Estates’ Sewer affiliate, along with Utilities, Inc. of Pennsylvania and Westgate, will not file for an increase in their existing base rates pursuant to Section 1308 of the Public Utility Code for a period of six months following the Commission’s entry of an order approving the Settlement. *See, Settlement* at para. 13.B. The lone exclusion to this “stay-out” is if there are any substantial changes in regulation or Federal tax rates or policy. As the OCA noted in its Statement in Support, however, if the Joint Application is approved on October 1, 2012, and the Companies were to file as soon as the stay-out expires, the proposed stay-out provision would prevent another rate increase before December, 2013 if those next general rate filings are fully litigated. As the OCA stated, the ratepayers will be assured of extended rate stability. I find this to be in the public interest that supports adopting the Settlement without modification and approving the proposed transaction as conditioned.

I also find that the notice and monitoring provisions the Companies agreed to in the Settlement support adopting the Settlement without modification and approving the proposed transaction. This includes not allocating to or seeking recovery of certain costs of the transaction from Pennsylvania customers (*see, Settlement* at paras. 13.D, 13.F and 13.I) and providing additional notice to the Commission and the OCA of various future transactions (*see, Settlement* at paras. 13.J and 13.K). While individually these provisions alone may not satisfy a public interest analysis, in total and coupled with the rate stay out discussed above, these benefits support adopting the Settlement without modification as being in the public interest and approving the proposed transaction with these conditions.

In addition, approving and adopting the Settlement is also in the public interest because accepting the Settlement position will avoid the substantial time and expense involved in litigating the proceeding. Accepting the Settlement will negate the need to prepare pre-filed testimony, examine or cross-examine witnesses, prepare main and reply briefs, exceptions and reply exceptions and any possibility of appeal. Avoiding these expenses serves the interests of all parties involved, as well as the Commission, and is therefore in the public interest.

As such, each of the benefits proposed in the Settlement are reasonable and support adopting the Settlement without modification.

Finally, with regard to the Petitions for Protective Order, because granting the Petitions is reasonable in light of the considerations articulated in Section 5.423(a) of the Commission's regulations, *supra*, and because the Petitions are unopposed, they will be granted.

CONCLUSION

I find that the Joint Petition for Approval of Settlement dated September 7, 2012 is in the public interest and consistent with the Commission standard for approving settlements. I also approve the Stipulation for Admission of Evidence dated September 7, 2012, and formally admit into the record of this proceeding the documents identified in paragraph 5 of that Stipulation, as noted above, as well as the Petitions for Protective Order dated April 13, 2012.

Accordingly, I recommend that the Commission approve the Settlement without modification and that the Commission issue all necessary approvals authorizing the transfer by sale contained in the Joint Application, subject to the terms and conditions contained in the Settlement.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding.

2. Every application for a certificate of public convenience shall be made to the commission in writing, be verified by oath or affirmation, and be in such form, and contain such information, as the commission may require by its regulations. A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable. In every case, the commission shall make a finding or determination in writing, stating whether or not its approval is granted. Any holder of a certificate of public convenience, exercising the authority conferred by such certificate, shall be deemed to have waived any and all objections to the terms and conditions of such certificate. 66 Pa. C.S. § 1103(a).

3. The Commission's Policy Statement regarding Utility Stock Transfer Under 66 Pa. C.S. § 1103(a)(3) provides guidance regarding when the Commission has jurisdiction over a transaction resulting in a new controlling interest, including defining what is a controlling interest. 52 Pa. Code § 69.901.

4. Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources.

5. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

6. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. Pa. P.U.C., et al. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al.*, Opinion and Order (entered July 14, 2011). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. *Id.*; *citing*, Warner v. GTE North, Inc., Docket No. C-00902815, Opinion and Order (entered April 1, 1996); Pa. P.U.C. v. CS Water and Sewer Associates, 74 PA PUC 767 (1991).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa. C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. P.U.C., 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Commonwealth Ct. 23, 480 A.2d 382 (1984).

9. The Commission’s Rules of Practice and Procedure permit the Commission to issue protective orders limiting the availability of certain proprietary or confidential information. 52 Pa. Code §§ 5.362 and 5.423.

10. The party seeking the protective order has the burden to establish that the potential harm to the party of providing the information would be substantial and the harm to the party if the information is disclosed without restriction outweighs the public’s interest in free and open access to the administrative hearing process. Petition for Protective Order of GTE North Inc., 1996 Pa PUC LEXIS 95, Docket No. G-00940402, (Order entered August 8, 1996); ITT Communications Services’ Petition for a Protective Order, 1991 Pa PUC LEXIS 193, Docket No. R-912017, (Order entered November 5, 1991).

11. In considering whether to issue a protective order, the Commission, pursuant to Section 5.423(a), should consider the following factors: (1) The extent to which the disclosure would cause unfair economic or competitive damage; (2) The extent to which the information is known by others and used in similar activities; (3) The worth or value of the information to the party and to the party's competitors; (4) The degree of difficulty and cost of developing the information; and (5) Other statutes or regulations dealing specifically with disclosure of the information. 52 Pa. Code § 5.423(a).

12. The Settlement filed on September 7, 2012 between the Companies and the OCA is in the public interest and should be approved without modification.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Approval of Settlement between Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, Utilities, Inc. – Westgate, Utilities, Inc., Highstar Capital Fund II L.P., Corix Utilities (Illinois) LLC and the Office of Consumer Advocate at Docket Numbers A-2012-2299431, A-2012-2299433, A-2012-2299434 and A-2012-2299394, dated September 7, 2012, is approved without modification, as being in the public interest.

2. That the Stipulation for Admission of Evidence between Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, Utilities, Inc. – Westgate, Utilities, Inc., Highstar Capital Fund II L.P., Corix Utilities (Illinois) LLC and the Office of Consumer Advocate at Docket Numbers A-2012-2299431, A-2012-2299433, A-2012-2299434 and A-2012-2299394, dated September 7, 2012, is granted.

3. That the record of this proceeding be reopened for the limited purpose of admitting the following documents into the record of this proceeding:

- a. The Joint Application for Approval of a Change of Control filed April 13, 2012 and docketed by the Commission Secretary at A-2012-2299394, A-2012-2299431, A-2012-2299433 and A-2012-2299434.
- b. Highly Confidential Application Exhibit A - Purchase and Sale Agreement with Disclosure Schedule, dated February 17, 2012.
- c. Highly Confidential Application Exhibit B - Utilities, Inc. and subsidiaries Consolidated Financial Statements for 2011 and 2010.
- d. Highly Confidential Application Exhibit C - Corix Infrastructure, Inc. Consolidated Financial Statements for 2011.
- e. Public Exhibit D - Pre and Post-Transaction Organizational Charts for HydroStar, Utilities, Inc. and Corix.
- f. Public Exhibit E - Overview of Corix Group dated March 2012.
- g. Responses to OCA Set I Interrogatories numbers 4, 6 and 8, dated June 26, 2012.

4. That two copies of each document listed in paragraph 3 above shall be filed with the Secretary's Bureau of the Commission, unless previously filed.

5. That the Petitions for Protective Order at Docket Numbers P-2012-2299711, P-2012-2299712, P-2012-2299713 and P-2012-2299714, dated April 13, 2012 are hereby consolidated with the Applications at Docket Numbers A-2012-2299431, A-2012-2299433, A-2012-2299434 and A-2012-2299394, dated April 13, 2012, and are approved.

6. That the Joint Application of Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, Utilities, Inc. – Westgate, Utilities, Inc., Highstar Capital Fund II L.P. and Corix Utilities (Illinois) LLC for Approval for a Transfer of Membership Interests Resulting In A Change of Utilities, Inc.'s Pennsylvania Subsidiaries at Docket Numbers A-2012-2299431, A-

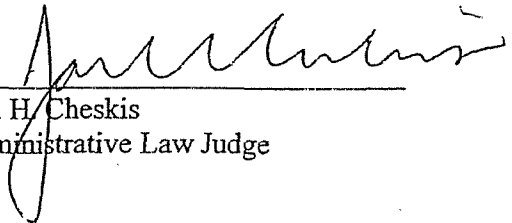
2012-2299433, A-2012-2299434 and A-2012-2299394, dated April 13, 2012, is approved, consistent with the Settlement dated September 7, 2012 approved in paragraph 1 above.

7. That all required certificates of public convenience be issued evidencing the Pennsylvania Public Utility Commission's approval of the Joint Application of Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, Utilities, Inc. – Westgate, Utilities, Inc., Highstar Capital Fund II L.P. and Corix Utilities (Illinois) LLC for Approval for a Transfer of Membership Interests Resulting In A Change of Utilities, Inc.'s Pennsylvania Subsidiaries, dated April 13, 2012, as modified by the Joint Petition for Approval of Settlement between Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, Utilities, Inc. – Westgate, Utilities, Inc., Highstar Capital Fund II L.P., Corix Utilities (Illinois) LLC and the Office of Consumer Advocate, dated September 7, 2012, at Docket Numbers A-2012-2299431, A-2012-2299433, A-2012-2299434 and A-2012-2299394.

8. That the Protest of the Office of Consumer Advocate dated May 14, 2012 is dismissed.

9. That this matter at Docket Numbers A-2012-2299431, A-2012-2299433, A-2012-2299434, A-2012-2299394, P-2012-2299711, P-2012-2299712, P-2012-2299713 and P-2012-2299714 be marked closed.

Date: October 3, 2012



Joel H. Cheskis
Administrative Law Judge

PENNSYLVANIA PUBLIC UTILITY COMMISSION

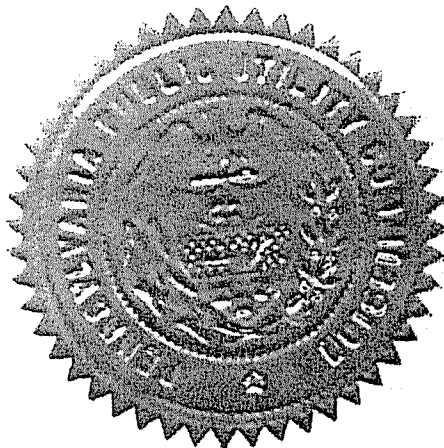
IN THE MATTER OF THE APPLICATION OF DOCKET NO: A-2012-2299431, A-2012-2299433, A-2012-2299434 and A-2012-2299394

Joint Application of Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania, Utilities, Inc. – Westgate, Utilities, Inc., Highstar Capital Fund II, L.P. and Corix Utilities (Illinois) LLC for Approval for a Transfer of Membership Interests Resulting In a Change of Control of Utilities, Inc.'s Pennsylvania Subsidiaries.

Effective Date: December 5, 2012

The Pennsylvania Public Utility Commission hereby certifies that after an investigation and/or hearing, it has, by its report and order made and entered, found and determined that the granting of the application is necessary or proper for the service, accommodation, convenience and safety of the public and hereby issues to the applicant this **CERTIFICATE OF PUBLIC CONVENIENCE** evidencing the Commission's approval.

In Witness Whereof, The PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused these presents to be signed and sealed, and duly attested by its secretary at its office in the city of Harrisburg this 5th day of December, 2012.



Rosemary Chivitt
Secretary

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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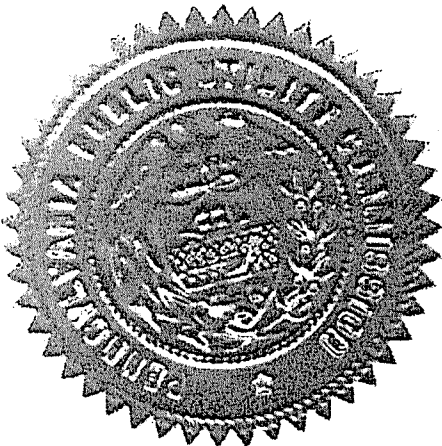
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