

STATE OF TENNESSEE

Office of the Attorney General



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Docket Room on March 15, 2023
at 12:38 p.m.

Chairman Herbert H. Hilliard
c/o Ms. Tory Lawless, Docket Manager
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, Tennessee 37242-0001

Re: Tennessee Public Utility Commission, Docket No. 22-000114, *Petition of Tennessee Water Service, Inc. to for Approval of Authority to Transfer Control Pursuant to Tenn. Code Ann. § 65-4-113*

Dear Chairman Hilliard:

On November 9, 2022, Tennessee Water Service, Inc. ("TWS"), along with Corix Infrastructure (US), Inc. ("Corix US") (collectively the "Companies"), filed a petition ("Petition") with the Tennessee Public Utility Commission (the "Commission") to approve the merger of Corix US with SW Merger Acquisition Corp. ("SWMAC"), owner and operator of SouthWest Water Company ("SouthWest"), as a transfer of indirect control. The merger proposes that the new, resulting entity will create a larger, stronger water and wastewater company.¹ The Consumer Advocate Division of the Tennessee Attorney General's Office ("Consumer Advocate") intervened in this docket for the purpose of affirming claims that such a transaction will not impact quality of service, will increase financial resources and flexibility as claimed in the Petition, and that there are measurements in place to ensure that claimed cost synergies actually accrue from the transaction.²

The Consumer Advocate believes it is not possible to accurately measure merger savings in a subsequent docket for purposes of evaluating transaction and acquisition cost recovery. However, we are mindful of past Commission decisions whereby the Commission has deferred

¹ *Petition of Tennessee Water Service, Inc. to for Approval of Authority to Transfer Control Pursuant to Tenn. Code Ann. § 65-4-113*, TPUC Docket No. 22-00114 (November 9, 2022), at 4.

² *Id.* at 15, 17, 18; *Direct Testimony of Steven Lubertozi on Behalf of Tennessee Water Service, Inc. (with Exhibit SML-1)*, at 16, lines 248-251.

transaction and acquisition cost recovery issues to subsequent rate proceedings.³ In light of the Commission's prior decisions, the Consumer Advocate declines submitting pre-filed expert testimony in this Docket.

The Consumer Advocate notes that SouthWest's balance of "Shareholder Equity" is less than the stated balance of its "Goodwill" asset.⁴ The Consumer Advocate attempted to determine whether the amount of goodwill on the books of SouthWest would be recoverable in future rate proceedings.⁵ The Companies declined to respond to the question as stated.⁶ Nonetheless, the Consumer Advocate is relying upon the testimony of SWMAC witness and SouthWest employee, Brian D. Bahr, that the ownership of SouthWest is well capitalized and willing to provide the necessary capital to support the operations of the merged entity.⁷

The Consumer Advocate asks for continued cooperation from the Companies to provide additional information in its annual report submitted to the Commission, namely (1) identification of the transaction costs incurred to complete the instant transaction for the resulting company as a whole and as allocated on a Tennessee jurisdictional basis, and (2) identification of savings from the instant transaction on a jurisdictional basis along with an explanation of how such savings were determined.

Nevertheless, after discussions with the Companies and considering the entire record, the Consumer Advocate submits that there remain no outstanding procedural matters requiring resolution by the Hearing Officer. Moreover, it is the Consumer Advocate's position that there remain no contested issues between the parties with respect to this docket and, unless otherwise requested by the Commission, hereby waives the filing of pre-filed testimony by its expert, David Dittmore, opening and closing statements, and cross examination of witnesses by the Companies.

As required, an original of this filing, along with four hard copies, will follow. Please do not hesitate to contact me with questions.

Respectfully,



Victoria B. Glover
Assistant Attorney General

cc: Ryan Freeman, Esq. and Cameron Kapperman, Esq.

³ See Order Approving Sale of Assets, Property, and Real Estate and Certificate of Public Convenience of Aqua Utilities Company, LLC Subject to Conditions and Requirements of the Tennessee Public Utility Commission, TPUC Docket No. 19-00062 (December 7, 2020), at 17-18.

⁴ See Attachment: CA 1-6 - Combined Company Financial, Responses of Tennessee Water Service, Inc. ("TWS") and Corix Infrastructure (US) Inc. ("Corix US") to Consumer Advocate's First Set of Discovery Requests, TPUC Docket No. 22-00114 (February 13, 2023).

⁵ Consumer Advocate's Second Set of Discovery Requests to Tennessee Water Services, Inc., along with Corix Infrastructure (US), Inc, TPUC Docket No. 22-00114 (February 13, 2023), at 2.

⁶ Responses of Tennessee Water Service, Inc. ("TWS") and Corix Infrastructure (US) Inc. ("Corix US") to Consumer Advocate's First Set of Discovery Requests, TPUC Docket No. 22-00114 (March 14, 2023), at 3.

⁷ Direct Testimony of Brian D. Bahr on Behalf of Tennessee Water Service, Inc., TPUC Docket No. 22-00114 (November 9, 2022), at 4-8.