

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION**

**NASHVILLE, TENNESSEE**

**June 9, 2023**

<b>IN RE:</b>	)	
	)	
<b>PETITION OF TENNESSEE WATER SERVICE, INC.</b>	)	
<b>AND CORIX INFRASTRUCTURE (US) INC., FOR</b>	)	<b>DOCKET NO.</b>
<b>APPROVAL TO TRANSFER CONTROL PURSUANT TO</b>	)	<b>22-00114</b>
<b>TENN. CODE ANN. § 65-4-113</b>	)	

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**ORDER APPROVING TRANSFER OF CONTROL**

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This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones, Commissioner Clay R. Good, Commissioner Kenneth C. Hill<sup>1</sup> and Commissioner David Crowell of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on May 8, 2023, for consideration of *Petition of Tennessee Water Service, Inc. and Corix Infrastructure (US) Inc., for Approval of Authority to Transfer Control Pursuant to Tenn. Code Ann. § 65-4-113* (“*Petition*”) filed by Tennessee Water Service, Inc. (“TWS”) and Corix Infrastructure (US) Inc, (“Corix US”) (collectively, the “Petitioners”) on November 9, 2022. The *Petition* seeks approval of a transfer of control of TWS that results from a merger of TWS’ parent, Corix US and SW Merger Acquisition Corp. (“SWMAC”). SWMAC is a Delaware corporation that owns 100% of South West Water Company (“Southwest”).

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<sup>1</sup> Commissioner Kenneth C. Hill was absent from the May 8, 2023 Commission Conference and did not participate in the deliberations or vote in this docket.

## **BACKGROUND AND PETITION**

TWS presently serves approximately 385 customers on one water system supplying the Chalet Village Subdivision in Sevier County. Corix US indirectly owns 100% of TWS. Corix US is owned by Corix Infrastructure Inc. (“CII”). The transaction described in the *Petition* involves the merger of the water and wastewater assets of Corix US and SWMAC. SWMAC owns and operates 18 water and wastewater utility companies in the United States. The transaction is accomplished through the merger of Corix US and SWMAC with Corix US surviving. After completion of the transaction, Corix Infrastructure, Inc. will own 50% of Corix US’ stock. SWMAC Holdco, an entity to be formed by SWMAC’s shareholders before closing, will acquire the remaining 50% of Corix US’ stock. 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.<sup>2</sup>

On November 9, 2022, the Petitioners filed a joint *Petition* asking for approval to transfer control pursuant to Tenn. Code Ann. § 65-4-113. In support of the *Petition*, the Petitioners also submitted the Pre-Filed Testimony of three witnesses: (1) Tiffany Van Horn, President of TWS; (2) Steven Lubertozi, Senior Vice President, and Legislative Affairs for CII; and (3) Brian Bahr, Director of Rates and Regulatory Affairs for Southwest. The testimony presented by the Petitioners supports the position that TWS will be controlled by a company with sufficient technical, financial, and managerial ability. The Petitioners’ testimony also asserts that the transaction is in the public interest.

The Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) sought<sup>3</sup> and was granted intervention into this proceeding.<sup>4</sup> On March 15, 2023, Consumer Advocate filed a letter in which it stated that, “there remain no outstanding

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<sup>2</sup> *Petition*, p. 15. (November 9, 2022).

<sup>3</sup> *Consumer Advocate Petition to Intervene* (January 20, 2023).

<sup>4</sup> *Order Granting The Petition to Intervene Filed by the Consumer Advocate* (March 3, 2023).

procedural matters requiring resolution by the Hearing Officer ... [and] there remain no contested issues between the parties.” In its letter, the Consumer Advocate noted two issues concerning the proposed transaction: (1) an impossibility to accurately measure merger savings in a subsequent docket for purposes of evaluating transaction and acquisition cost recovery, citing prior Commission decisions whereby transaction and acquisition cost recovery is deferred to subsequent rate proceedings; and (2) the future rate setting treatment of a goodwill asset on Southwest’s balance sheet, while acknowledging the Petitioners’ testimony that ownership is well capitalized and willing to provide the necessary capital to support the operations of the merged entity.<sup>5</sup> No other party sought to intervene in this matter.

Steven Lubertozi states in his Pre-Filed Testimony that the transaction joins two highly complementary businesses. He also states that the combined companies have deeper resources and capabilities to invest and operate in the water and wastewater sector and that CIP’s financial resources, strong leadership team, and extensive managerial expertise make it an ideal owner of water and wastewater utilities.<sup>6</sup> Mr. Lubertozi asserts four primary benefits result from the transaction: (1) greater diversity and depth of resources that will allow sharing of prudent practices (both at the corporate level and regionally/locally) and an increase in emergency response resources; (2) expected reduction in costs from the combination of senior corporate and operational leadership; (3) increased financial resources and flexibility placing TWS in a favorable position to attract capital on reasonable terms; and (4) cost savings resulting from improved efficiency from the integration of administrative and general functions.<sup>7</sup> Mr. Lubertozi further states that the combination of the companies will not adversely impact TWS’s quality of service, but rather should improve service over time due to the sharing

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<sup>5</sup> Letter to Chairman Herbert H. Hilliard Re No Outstanding Procedural Matters From Victoria B. Glover, Consumer Advocate (March 15, 2023).

<sup>6</sup> Steven Lubertozi, Pre-Filed Direct Testimony, pp. 15-16, (November 9, 2022).

<sup>7</sup>*Id.* at 15-16.

of industry expertise and prudent practices between CII and SouthWest. He explains, “the combined financial resources of CII and SouthWest will facilitate needed utility infrastructure investments and continued growth.”<sup>8</sup> Mr. Lubertoizzi observes that TWS does not propose any changes to customer rates in the instant proceeding and that savings that are generated through integration will be reflected in customer rates in future proceedings.<sup>9</sup> Finally, Mr. Lubertoizzi proposes a set of consumer protections involving financial, operational, and regulatory commitments.<sup>10</sup>

Tiffany Van Horn states in her Pre-Filed Testimony that local operations and leadership are important to both CII and SouthWest. Therefore, TWS will continue to operate under its existing name. TWS will continue to provide safe and reliable water utility service to its customers and maintain facilities in Tennessee.<sup>11</sup> Ms. Van Horn further stated that the shared values of the merger partners provides, “an opportunity for operational improvement that follows from sharing prudent practices and resources.”<sup>12</sup> She further asserts that TWS, and each water and wastewater utility within the combined company, will benefit from access to a broader network of knowledge and mutual assistance.<sup>13</sup> Ms. Van Horn states that resource sharing reduces operational risk.<sup>14</sup>

Brian Bahr states in his Pre-Filed Testimony that, “Southwest’s financial resources, strong leadership team, managerial expertise, and commitment to providing safe, adequate, and proper utility service to its customers make it an ideal owner of water and wastewater utilities.”<sup>15</sup> Mr. Bahr advocates for the proposed merger because the combined companies will create a stronger company with

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<sup>8</sup>*Id.* at 18.

<sup>9</sup>*Id.* at 17-18.

<sup>10</sup>*Id.* at 19.

<sup>11</sup> Tiffany Van Horn, Pre-Filed Direct Testimony, p. 6, (November 9, 2022).

<sup>12</sup>*Id.* at 7.

<sup>13</sup>*Id.* at 8.

<sup>14</sup>*Id.*

<sup>15</sup> Brian Bahr, Pre-Filed Direct Testimony, p. 8, (November 9, 2022).

greater financial, managerial, and operational resources, which will better facilitate needed infrastructure investments and growth. He further states that the shared knowledge, expertise, and prudent practices will benefit all of the company's various utility companies.<sup>16</sup>

#### **STANDARD FOR COMMISSION APPROVAL**

Regarding a transfer of control or ownership of a utility, Commission approval is required in accordance with Tenn. Code Ann. § 65-4-113(b), which states:

Upon petition for approval of the transfer of authority to provide utility services, the commission shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The commission shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.<sup>17</sup>

#### **FINDINGS AND CONCLUSIONS**

The Commission reviews proposed transfers of control or ownership by examining the technical, managerial, and financial qualifications post-transaction to assess if the entity can provide the utility services and to determine whether the transaction is in the public interest.

The Commission must determine whether the proposed new owners possess the requisite technical, managerial and financial qualifications after the transaction to control TWS and whether the transfer of ownership and control is in the public interest as required by Tenn. Code Ann. § 65-4-113. The voting panel found that the Petitioners have demonstrated that after the proposed merger, TWS will be controlled by a company with sufficient technical, managerial, and financial qualifications. The Petitioners' witnesses demonstrate that the merging companies are well

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<sup>16</sup> Direct Testimony of Brian Bahr, p. 8, (November 9, 2022).

<sup>17</sup> Tenn. Code Ann. § 65-4-113(a) (2022).

capitalized, possess many years of industry experience, and have the operational resources necessary to properly serve TWS' customers. The combination of the merging companies should result in additional opportunities for cost savings, knowledge and experience sharing, and resource pooling. The panel further noted that the concerns raised by the Consumer Advocate in its letter filing are better reserved for consideration in a future rate base setting docket, which was also noted by the Consumer Advocate in its filing. Therefore, the panel unanimously found that the merged companies will have sufficient technical, managerial, and financial resources to provide utility services within the State of Tennessee.

Further, the panel found that the proposed merger serves to advance the public interest. The Petitioners demonstrate that the merger should result in improved service over time due to the sharing of industry expertise and prudent practices. In addition, the combined financial resources should facilitate utility infrastructure investments needs and growth, as well as flexibility to address emergencies requiring immediate resources. Therefore, the panel unanimously found that the proposed merger is in the public interest.

Thereafter, based upon the *Petition*, testimony, and all evidence contained in the record, the voting panel unanimously approved the merger and transfer of control as described in the *Petition* in accordance with Tenn. Code Ann. § 65-4-113.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition of Tennessee Water Service, Inc. and Corix Infrastructure (US) Inc., for Approval of Authority to Transfer Control Pursuant to Tenn. Code Ann. § 65-4-113* filed by Tennessee Water Service, Inc. and Corix Infrastructure (US) Inc. is approved.

2. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order.

3. Any person who is aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

**TENNESSEE PUBLIC UTILITY COMMISSION:**

**Chairman Herbert H. Hilliard  
Vice Chairman David F. Jones  
Commissioner Clay R. Good, and  
Commissioner David Crowell, concurring.**

None dissenting.

**ATTEST:**

A handwritten signature in dark ink, appearing to read "Earl Taylor" with a stylized flourish or initials "abh" to the right.

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**Earl R. Taylor, Executive Director**