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July 14, 2023

Ms. A. Shonta Dunston, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4325

Via Electronic Filing

Re: Application by Carolina Water Service, Inc. of North Carolina, along with Corix Infrastructure (US) Inc. and SW Merger Acquisition Corp., for Approval of a Business Combination Transaction, Pursuant to N.C. Gen. Stat. § 62-111
--Rebuttal Testimony and Exhibit

Dear Ms. Dunston:

Attached for filing in this docket, please find the Joint Rebuttal Testimony (with one exhibit) of Applicant witnesses Dante M. DeStefano, Brian D. Bahr, and Donald H. Denton, III, and the Rebuttal Testimony of Ellen Lapson.

As always, thank you and your staff for your assistance; please feel free to contact us if there are questions or suggestions.

Sincerely,

Electronically Submitted

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c: Parties of Record

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-354, SUB 412

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	JOINT REBUTTAL
Application by Carolina Water Service,)	TESTIMONY OF DANTE M.
Inc. of North Carolina, along with Corix)	DESTEFANO, BRIAN D.
Infrastructure (US) Inc. and SW Merger)	BAHR, AND DONALD H.
Acquisition Corp., for Approval of a)	DENTON III ON BEHALF OF
Business Combination Transaction)	JOINT APPLICANTS

JOINT REBUTTAL TESTIMONY OF DESTEFANO, BAHR, AND DENTON

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I. WITNESS INTRODUCTION AND BACKGROUND

Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Dante M. DeStefano, and I am the Director of Regulatory Affairs for Corix Infrastructure Inc. (“CII”). My business address is 500 W. Monroe, Suite 3600, Chicago, Illinois 60661.

Q. ARE YOU THE SAME DANTE M. DESTEFANO WHO PREVIOUSLY FILED DIRECT TESTIMONY ON NOVEMBER 23, 2022, IN THIS PROCEEDING?

A. Yes.

Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Brian D. Bahr, and I am the Director of Rates and Regulatory Affairs for SouthWest Water Company (“SouthWest”), a subsidiary of SW Merger Acquisition Corp. (“SWMAC”). My business address is 1620 Grand Avenue Parkway, Suite 140, Pflugerville, Texas 78660.

Q. ARE YOU THE SAME BRIAN D. BAHR WHO PREVIOUSLY FILED DIRECT TESTIMONY ON NOVEMBER 23, 2022, IN THIS PROCEEDING?

A. Yes.

Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Donald H. Denton III, and I am the Senior Vice President, East Operations for CII. My business address is 5821 Fairview Road, Suite 401, Charlotte, North Carolina 28209.

1 Q. ARE YOU THE SAME DONALD H. DENTON III WHO PREVIOUSLY
2 FILED DIRECT TESTIMONY ON NOVEMBER 23, 2022, IN THIS
3 PROCEEDING?

4 A. Yes.

5 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

6 A. The purpose of our rebuttal testimony is to address the Public Staff –
7 North Carolina Utilities Commission’s (“Public Staff”) — proposed
8 Regulatory Conditions filed as Public Staff Exhibit 1 (“Staff-Proposed
9 Conditions”) to the Joint Testimony of Public Staff witnesses Lynn
10 Feasel, June Chiu, Lindsay Q. Darden, and John R. Hinton on June 30,
11 2023. More specifically, our rebuttal testimony offers some general
12 comments regarding the Staff Proposed Conditions and specifically
13 addresses each of the Staff Proposed Conditions individually.

14 II. OVERALL COMMENTS AND GENERIC ISSUES

15 Q. DO THE JOINT APPLICANTS AGREE WITH THE STAFF-
16 PROPOSED CONDITIONS?

17 A. Yes, with certain modifications. Of the 37 Staff-Proposed Conditions, the
18 Joint Applicants agree with five of them as proposed and with twenty-
19 nine of them subject to minor, non-substantive modifications or
20 clarification. The Joint Applicants do not outright reject any of the Staff-
21 Proposed Conditions but respectfully assert that three of the Staff-
22 Proposed Conditions are agreeable only if modified substantively.

1 Without substantive modification, these three conditions would lack
2 sufficient justification, be vague, or be administratively onerous and
3 unnecessarily costly relative to any potential benefits they may provide.
4 For convenience, the Joint Applicants refer to these conditions as (1)
5 Bucket One – Agreeable Conditions without Modification; (2) Bucket
6 Two – Agreeable Conditions with Non-Substantive Modifications or
7 Clarification; and (3) Bucket Three – Agreeable Conditions with
8 Substantive Modifications.

9 An example of the overreach within the Staff-Proposed
10 Conditions is the inclusion in certain commitments of investor entities
11 that are only distantly related to the regulated utility, Carolina Water
12 Service, Inc. of North Carolina (“CWSNC”). Some of the entities to which
13 the Public Staff intends certain of the Staff-Proposed Conditions to apply
14 are upstream shareholders with numerous other ownership interests
15 and are inappropriate for inclusion in any conditions imposed in the
16 instant proceeding. Further, the Joint Applicants are concerned that
17 some of the Staff-Proposed Conditions are indeterminate to the extent
18 that assessing compliance therewith would be difficult to measure, while
19 others would require undertakings beyond the scope of a utility’s
20 reasonable operations. Finally, in several instances, it is unclear why
21 inclusion of certain conditions would be appropriate for the Proposed
22 Transaction, and likewise unclear as to what benefit they may provide.

1 Joint Applicants Rebuttal Exhibit 1 to our rebuttal testimony
2 contains the Joint Applicants' proposed Regulatory Conditions ("Joint
3 Applicants' Conditions"). Joint Applicants Rebuttal Exhibit 1 to our
4 rebuttal testimony also contains a table showing each of the Staff-
5 Proposed Conditions and indicating, for each proposed condition,
6 whether the Joint Applicants have accepted or proposed a modification
7 (and to what degree - non-substantive or substantive).

8 **Q. DID THE PUBLIC STAFF'S TESTIMONY INCLUDE DETAILED**
9 **JUSTIFICATION FOR THE STAFF-PROPOSED CONDITIONS?**

10 A. No. The Public Staff's testimony did not support Staff-Proposed
11 Conditions Nos. 1-11 and only supported Staff-Proposed Conditions
12 Nos. 12-37, grouped under the title "No Adverse Impact on Rates and
13 Services," with very broad, general statements.¹ Regarding the 26
14 conditions grouped under the "No Adverse Impact on Rates and
15 Services" title, the Public Staff testified that these conditions were
16 designed to ensure that there would be no adverse impact on the rates
17 and services provided by CWSNC to its North Carolina customers after
18 the Proposed Merger.² The Public Staff explained that these conditions
19 would require CWSNC to: 1) comply with all regulatory requirements; 2)
20 maintain sufficient personnel to satisfy regulatory reporting

¹ Beginning on page 12, at line 18 of its testimony, and continuing until line 22 of page 13.

² On page 12, beginning at line 20.

1 requirements; 3) make reasonable efforts to retain key staff serving
 2 North Carolina customers; 4) monitor and track customer satisfaction; 5)
 3 report annually on efforts to develop and retain qualified operators and
 4 research of the operator labor market; 6) notify the Public Staff when
 5 there are changes in regulatory or operational personnel at the
 6 management/supervisor level; and 7) develop a low-income customer
 7 assistance program.³ Finally, the Public Staff explained that this group
 8 of the Staff-Proposed Conditions would govern relationships and
 9 transactions between CWSNC and its affiliates.⁴

10 **Q. DID THE PUBLIC STAFF PROVIDE ANY FURTHER SUPPORT FOR**
 11 **THE LANGUAGE IT USED IN THE STAFF-PROPOSED CONDITIONS**
 12 **TO WHICH THE JOINT APPLICANTS PROPOSE MODIFICATIONS?**

13 A. No. The Public Staff’s testimony provided no further support or
 14 explanation for the language in the Staff-Proposed Conditions that Joint
 15 Applicants propose be modified.⁵

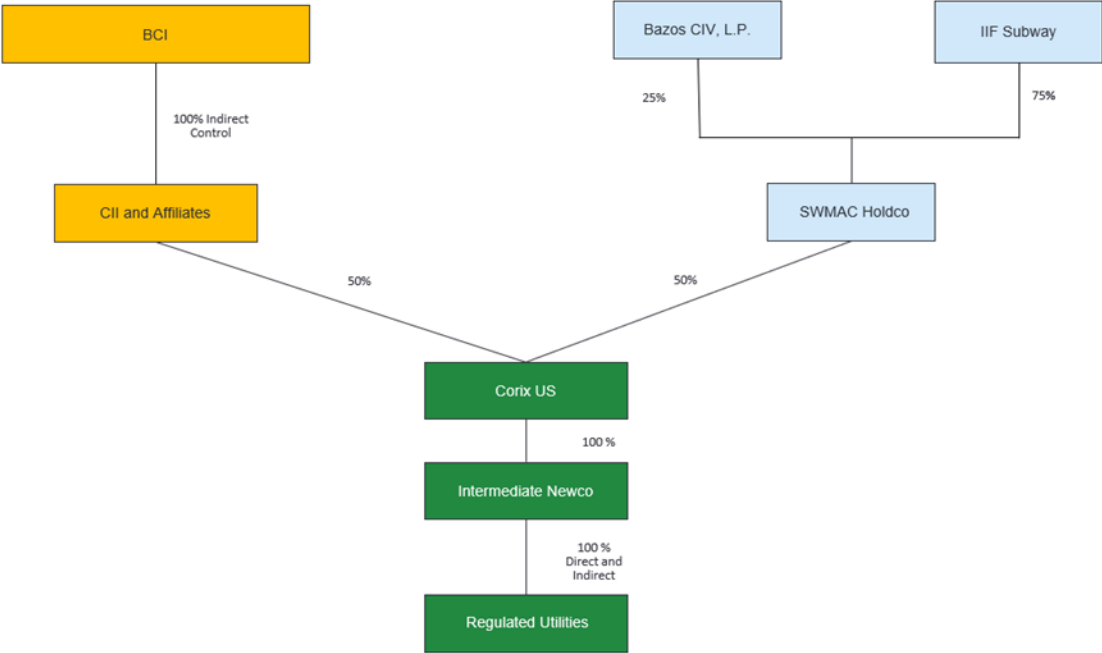
16 **Q. WHAT ARE THE KEY GENERIC ISSUES THAT THE JOINT**
 17 **APPLICANTS ADDRESS?**

³ On page 13, beginning at line 6.
⁴ On page 13, beginning at line 18.
⁵ On page 9, at line 7 of its testimony, the Public Staff groups the Staff-Proposed Conditions “1-18” into a category titled “Ratepayer Protection from Potential Costs and Risks Associated with the Merger.” The Public Staff then goes on to specifically support the Staff-Proposed Conditions Nos. 1-11 before categorizing the Staff-Proposed Conditions Nos. 12-37, as discussed above. It, therefore, appears there is a typographical error on page 9, line 7. It seems the first category should include the Staff-Proposed Conditions Nos. 1-11 and not 1-18. In any event, the Public Staff did not provide any specific support for the Staff-Proposed Conditions Nos. 13-18 in its section/category titled “Ratepayer Protection from Potential Costs and Risks Associated with the Merger.”

1 A. They are: (a) the appropriate status of the various entities, with respect
 2 to the “reach” of the Staff-Proposed Conditions, as referenced above;
 3 (b) the limited support for many of the Staff-Proposed Conditions beyond
 4 conclusory assertions about their purported effectiveness; (c) the fact
 5 that many of the assertions are temporally unlimited; (d) the extent to
 6 which reporting contents and intervals should be designed with a
 7 rigorous focus on protecting customers while balancing the utility’s costs
 8 of compliance against the efficacy and value of the reports for the
 9 intended purpose; and (e) a recognition that some of the measures
 10 contained in a balanced set of the Staff-Proposed Conditions are well
 11 suited for guidance during the initial post-merger period, but should be
 12 designed to terminate after a certain period, unless the North Carolina
 13 Utilities Commission (“Commission”) determines later that they should
 14 be continued or otherwise modified.

15 **Q. WHICH OF THE ENTITIES LISTED BY THE PUBLIC STAFF IN THE**
 16 **STAFF-PROPOSED CONDITIONS SHOULD NOT BE INCLUDED**
 17 **WITHIN THE SCOPE OF THESE CONDITIONS?**

18 A. For context, it is important to understand the post-closing corporate
 19 structure, as shown in the Joint Application as Figure 2:



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The entities above Corix Infrastructure (US) Inc. (“Corix US”) and Intermediate Newco — CII and SWMAC Holdco, and their respective direct or indirect shareholders BCI, IIF Subway, and Bazos – are financial sponsors. Corix US and Intermediate Newco will have boards with independent directors and the board of directors of Intermediate Newco will be responsible for governance and, ultimately, the key decisions that impact the customers of the operating utilities, including CWSNC. In a recent similar transaction – Docket No. G-40, Sub 160 (In the Matter of Joint Application of Frontier Natural Gas Company and Ullico Infrastructure Hearthstone Holdco, LLC for Approval of the Sale and Transfer of Stock) – the regulatory conditions proposed by the Public Staff and approved by the Commission did not reach the financial

1 sponsors of the operating utilities. Instead, the conditions were limited
 2 to the entities with boards responsible for governing and making the key
 3 decisions that affect the customers of the relevant operating utilities.

4 Accordingly, the only entities to which any approved regulatory
 5 conditions should apply are CWSNC, Intermediate Newco, and Corix
 6 US. The relevant holding companies for the regulated utilities, including
 7 CWSNC, are Intermediate Newco and Corix US. The entities above
 8 Corix US are not among the Joint Applicants in this proceeding and
 9 should not be subject to conditions imposed as part of the Commission’s
 10 approval of the Proposed Transaction.⁶ The Joint Applicants’
 11 Conditions, enumerated in Joint Applicants Rebuttal Exhibit 1, reflect
 12 only the appropriate entities to which conditions should apply by
 13 appropriately excluding CII, SWMAC Holdco, IIF, Bazos, and BCI. The
 14 Joint Applicants have therefore defined “Affiliates” as Corix US and any
 15 business entity of which ten percent (10%) or more of the voting
 16 securities or interests are owned, directly or indirectly, by Corix US,
 17 including but not limited to CWSNC and Intermediate Newco.

⁶ Consistent with the regulatory conditions set forth in Docket No. G-40, Sub 160, the regulatory conditions proposed by the Joint Applicants are limited to the utility platform company (in that proceeding, Ullico Infrastructure Hearthstone Holdco, LLC, and in this proceeding, Corix Infrastructure (US) Inc.) and relevant intermediary holding companies and do not extend, except in one limited respect, to the financial sponsors of the utility platform company. We excluded SW Merger Acquisition Corp., an applicant, from the regulatory conditions proposed by the Joint Applicants because that entity merges within and into Corix Infrastructure (US) Inc., with the latter being the surviving entity. Accordingly, any regulatory commitments made by SW Merger Acquisition Corp. would be become obligations of Corix Infrastructure (US) Inc. and therefore are redundant.

1 Notwithstanding this, the Joint Applicants are willing to have the
 2 parent entities, CII and SWMAC Holdco, acknowledge and consent to
 3 the agreed-upon regulatory conditions.⁷ This approach is consistent with
 4 the approach taken by the Public Staff and the Commission in Docket
 5 No. G-40, Sub 160.

6 **Q. WHY SHOULD THE STAFF-PROPOSED CONDITIONS BE**
 7 **ADJUSTED IN SOME INSTANCES?**

8 A. The Joint Applicants understand the role of regulatory conditions in
 9 these types of transactions and have committed to (or are in the process
 10 of agreeing to) regulatory conditions in other jurisdictions in connection
 11 with the Proposed Transaction.⁸ Joint Applicants have also reviewed
 12 regulatory conditions agreed to by parties in similar transactions
 13 involving the acquisition of utility holding companies with utilities
 14 operating in North Carolina. As such, Joint Applicants understand the
 15 purpose and support the practice; however, it is important — both for
 16 efficiency and as a best practice — to design each regulatory condition
 17 to align with the specific details of this Proposed Transaction. Regulatory
 18 conditions that would not support a regulatory purpose, or duplicate

⁷ Intermediate Newco and SWMAC Holdco are entities that have not yet been formed but will be formed prior to the closing of the Proposed Transaction. As the Commission’s approval of the Proposed Transaction will be conditioned on the Regulatory Conditions, the Regulatory Conditions will apply to Intermediate Newco and SWMAC Holdco only upon the closing of the Proposed Transaction.

⁸ Joint Applicants have changed the word “Merger” to “Proposed Transaction” throughout our modified conditions to align with the terminology in the Joint Applicants’ direct testimony and the Joint Application.

1 existing efforts or compliance requirements, would defeat the purpose
2 to be served and would ultimately be wasteful of the time and other
3 resources of all parties. Joint Applicants have proposed specific
4 modifications and assert that, with these modifications, the Joint
5 Applicants' Conditions adequately protect customers, given the relevant
6 details of the Proposed Transaction.

7 **Q. SHOULD THE STAFF-PROPOSED CONDITIONS BE LIMITED TO A**
8 **DISCRETE, INITIAL POST-MERGER PERIOD?**

9 A. Yes, where appropriate. Certain regulatory conditions will elicit
10 information that the Commission and the Public Staff can utilize during
11 the early post-merger period to track and assess how the combined
12 companies are functioning, accounting for certain costs, and managing
13 their operations. It is, understandably, a period of corporate and
14 regulatory transition that warrants careful review. This period should
15 give way, as soon as practicable, to a utility-regulator relationship that
16 requires less incremental oversight and that becomes more reflective of
17 the current regulatory environment expected efficiencies and ongoing
18 operations emanating from the Proposed Transaction. Examples of
19 suggested time limitations for certain regulatory conditions are
20 addressed in Joint Applicants Rebuttal Exhibit 1.

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III. BUCKET ONE – AGREEABLE CONDITIONS WITHOUT MODIFICATION

Q. PLEASE IDENTIFY THE STAFF-PROPOSED CONDITIONS THAT THE JOINT APPLICANTS ACCEPT WITHOUT MODIFICATIONS.

A. The “Bucket One” conditions Joint Applicants accept, as proposed by the Public Staff, are the following:

- Condition 3 (Non-Consummation of Merger);
- Condition 11 (Common Equity Capital);
- Condition 14 (Access to Books and Records);
- Condition 21 (Regulatory Reporting Requirements)⁹; and
- Condition 24 (Overall Service Quality).

IV. BUCKET TWO – AGREEABLE CONDITIONS WITH NON-SUBSTANTIVE MODIFICATIONS OR CLARIFICATION

Q. PLEASE IDENTIFY THE STAFF-PROPOSED CONDITIONS THE JOINT APPLICANTS ACCEPT, ALBEIT WITH SOME MINOR, NON-SUBSTANTIVE MODIFICATIONS OR CLARIFICATION.

A. The “Bucket Two” conditions the Joint Applicants accept, with some minor, non-substantive modifications or clarification, are the following:

- Condition 1 (Transaction Costs and Accounting);

⁹ Attachment A to Rebuttal Exhibit 1 contains the Joint Applicants’ list of Regulatory Reporting Requirements, and CWSNC will work with Staff to modify the list as needed.

- 1 • Condition 2 (Costs to Achieve Merger Savings);
- 2 • Condition 4 (Inclusion of Cost Savings in Future Rate
- 3 Proceedings);
- 4 • Condition 5 (Hold Harmless Commitment);
- 5 • Condition 6 (Distributions);
- 6 • Condition 8 (Notice of Certain Investments);
- 7 • Condition 9 (Notice of Certain Investments-Intermediate
- 8 Newco);
- 9 • Condition 10 (Notice by CWSNC of Default or Bankruptcy of an
- 10 Affiliate);
- 11 • Condition 12 (Post-Closing Financial Information);
- 12 • Condition 13 (Meetings with Public Staff);
- 13 • Condition 15 (Changes to Board of Directors or Management);
- 14 • Condition 16 (Notice and Consultation with Public Staff
- 15 Regarding Proposed Structural and Organizational Changes);
- 16 • Condition 18 (Financial Statements);
- 17 • Condition 19 (Obligation with Affiliates);
- 18 • Condition 20 (Capital Budgets);
- 19 • Condition 22 (Regulatory and Operational Staffing);
- 20 • Condition 23 (Customer Surveys);
- 21 • Condition 26 (Cost Allocation Manual);

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- Condition 27 (Charges for and Allocations of the Costs of Affiliate Transactions);
- Condition 28 (Transfer Pricing Between Affiliates);
- Condition 29 (Transfer of Services, Functions, Employees, or Assets);
- Condition 30 (Affiliated Agreements);
- Condition 31 (Affiliate Transactions Report);
- Condition 32 (Service Area Reporting);
- Condition 33 (Geographic Information Systems (GIS) Mapping);
- Condition 34 (Emergency Operator System);
- Condition 35 (Customer Assistance Program (CAP));
- Condition 36 (Leadership Retention); and
- Condition 37 (Operator Development and Retention).

Q. PLEASE EXPLAIN THE PROPOSED MODIFICATIONS OR CLARIFICATION TO THE STAFF-PROPOSED CONDITIONS IN BUCKET TWO.

A. The “Bucket Two” conditions the Joint Applicants accept with minor, non-substantive modifications or clarification are briefly summarized below (and provided in full text on Joint Applicants Rebuttal Exhibit 1). Please note that annual reporting dates were adjusted to April 30 to synchronize with the typical filing date for CWSNC’s Commission Annual

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Report, which will allow for efficient consolidation of reporting efforts, align with the workflow of the Annual Report, and limit filing costs.

- Condition 1 (Transaction Costs and Accounting), Condition 2 (Costs to Achieve Merger Savings), and Condition 4 (Inclusion of Cost Savings in Future Rate Proceedings) — we have added a definition of “Transaction Costs” prior to Condition 1, and have clarified that Transaction Costs, along with incentive and retention payments directly related to the Proposed Transaction, will be excluded from CWSNC for ratemaking purposes. In addition, we have clarified that “Integration Costs” — the costs of integrating administrative and general functions — may be recovered through rates only to the extent the benefits of integrating such functions exceed the costs. We also included into the Joint Applicants’ Conditions the Staff-Proposed Condition 4 but streamlined associated reporting requirements. As stated in the Joint Application, the Joint Applicants accept that Transaction Costs will be excluded from rates but believe that costs incurred to achieve benefits for customers – benefits that would not be achievable but for the Proposed Transaction - should be recoverable to the extent of generated customer savings. These changes are consistent with the purpose of the Staff-Proposed Conditions, as well as similar transactions.

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- Condition 5 (Hold Harmless Commitment) — we merely changed the standard for taking actions to hold customers harmless from “reasonably necessary and appropriate” to “commercially reasonable.” This standard is more appropriate for a business while still adequately protecting customers.
- Condition 6 (Distributions) — we kept the proposed 100% of net income dividend limitation but modified this condition to terminate after five years. Regulatory dividend limitations are fairly extraordinary. While we accept this scrutiny for a period of time after closing, absent compelling circumstances, which do not exist here, the condition should terminate after a reasonable period of time after closing.
- Condition 8 (Notice of Certain Investments) — we have modified this condition to require an annual report listing all legal entities controlled by Corix US, including identification of any entity or acquisitions representing 10% or more of Intermediate Newco’s book capitalization. As modified, this condition would terminate five years after closing. An annual report will provide the Commission and the Public Staff with adequate information to monitor any material acquisitions by Corix US and Intermediate Newco post-merger, while being less burdensome for CWSNC.

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In addition, five years is an adequate period of time for such close monitoring of post-merger Corix US acquisitions.

- Condition 9 (Notice of Certain Investments-Intermediate Newco) — we have modified this condition to require CWSNC to file a notice with the Commission within 10 business days after Intermediate Newco makes any application to any state regulatory commission to acquire a controlling interest in a public utility. This modified condition would terminate five years after closing. Again, five years is adequate for such close monitoring of post-merger Intermediate Newco acquisitions.
- Condition 10 (Notice by CWSNC of Default or Bankruptcy of an Affiliate) — consistent with the discussion at the outset of Joint Applicant’s rebuttal testimony regarding the entities to which these regulatory conditions should apply, we have modified this condition, relating to notice of a default or bankruptcy, to be triggered by (a) a default of an obligation that is material to Corix US, Intermediate Newco, or CWSNC, or (b) a bankruptcy that is material to Corix US, Intermediate, Newco, or CWSNC. As stated previously, the entities above Corix US are financial sponsors; the relevant holding companies for CWSNC are Intermediate Newco and Corix US. Thus, the scope of this condition should be limited to the Corix US level.

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- Condition 12 (Post-Closing Financial Information) — consistent with the comments above regarding the entities to which these regulatory conditions should apply, we have modified this condition relating to post-closing financial information to apply to CWSNC, Intermediate Newco, Corix Regulated Utilities (US) Inc. (“CRU US”), and SouthWest Water Company. Besides the Commission-regulated CWSNC, these are the entities expected to engage independent auditors after closing. In addition, we have modified this condition to be filed no later than 30 days after completion of the first year’s audit after the closing of the transaction; this change was made to allow adequate time to prepare and finalize financial statements, including completion of any audits.
- Condition 13 (Meetings with Public Staff) — As written, this condition is overly broad because it unnecessarily extends its application to distant, upstream financial sponsors that will not be directly involved in CWSNC’s business and operations, and it is temporally unlimited in scope. The Joint Applicants propose modifying this condition to require CWSNC and a representative from Intermediate Newco meet annually with the Public Staff “if requested.” Additionally, the Joint Applicants propose limiting the

- 1 duration of this condition to a period of five years following the
2 closing of the Proposed Transaction.
- 3 • Condition 15 (Changes to Board of Directors or Management) —
4 Similar to Staff-Proposed Condition No. 13, this Condition is
5 overbroad because it unnecessarily extends its application to
6 distant upstream entities and is temporally unlimited in scope.
7 The Joint Applicants propose removing the references to BCI,
8 CII, Bazos, IIF Subway, and SWMAC Holdco and adding a
9 reference to CRU US. Next, the Joint Applicants propose limiting
10 the duration of this Condition to a period of five years following
11 the closing of the Proposed Transaction. The Joint Applicants
12 also propose clarifying that the Condition would require
13 notification of changes “to the membership of the Board of
14 Directors” and not require notification of “any changes to the
15 Board of Directors.”
 - 16 • Condition 16 (Notice and Consultation with Public Staff
17 Regarding Proposed Structural and Organizational Changes) —
18 As written, this condition is overbroad because, similar to Staff-
19 Proposed Condition Nos. 13 and 15, it unnecessarily extends its
20 application to distant upstream entities. The Joint Applicants
21 propose removing references to BCI, CII, Bazos, IIF Subway, and
22 SWMAC Holdco. Staff-Proposed Condition No. 16 is also vague

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because it is not clear what would constitute a “significant change” that would trigger the Condition’s requirements. The Joint Applicants propose using “material” instead of “significant.” The Joint Applicants propose removing “organization” and “activities” and instead focusing on the Affiliates “*corporate structure*” because organization could be interpreted as simple staffing changes. The Joint Applicants also propose removing the language “Upon request, or at least 60 days before such changes are to become effective,” and inserting a sentence at the end of Staff-Proposed Condition No. 16 stating that CWSNC shall inform the Public Staff promptly of any such events and changes.

- Condition 18 (Financial Statements) — As written, this condition is overbroad because it is temporally unlimited in scope. The Joint Applicants propose limiting the duration of this Condition to a period of five years following the closing of the Proposed Transaction. The Joint Applicants also propose changing the deadline from “by the end of the first quarter of each calendar year” to 30 days after completion of Corix Regulated Utilities (US) Inc. and Intermediate Newco audited financial statements.¹⁰ Finally, the Joint Applicants propose modifying this Condition to

¹⁰ The Joint Applicants note that not all listed entities will have audited financial statements but will provide the statements for those that do.

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clarify that the financial statements shared will be provided confidentially.

- Condition 19 (Obligation with Affiliates) — regarding obligations relating to affiliates, we have clarified that CWSNC will not, without the Commission’s prior approval, guarantee any debt or credit instruments of Intermediate Newco or Affiliate unless such debt is incurred for the specific purpose of CWSNC’s system or operations. In addition, we have added that the proceeds of any debt incurred by CWSNC will only be used for purposes specific to its system or operations. This modification will enable joint or consolidated financings while protecting CWSNC customers by ensuring any CWSNC debt guarantees are limited to debt to be used for the CWSNC system for the benefit of CWSNC customers.

- Condition 20 (Capital Budgets) — with regard to capital budgets, we have modified this condition to state that CWSNC shall maintain a level of capital and operational support in North Carolina necessary to provide safe, efficient, and reliable service at reasonable rates. In addition, we have committed that CWSNC will, for a period of five years after closing, provide to the Public Staff, on a confidential basis and for informational purposes, its internally approved capital budget for new, expanded, or

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upgraded water and wastewater facilities in North Carolina, by April 30 each year. CWSNC does not currently prepare six-year capital budgets as proposed by Public Staff. Thus, we modified this Condition to provide internally approved capital budgets annually.

- Condition 22 (Regulatory and Operational Staffing) — regarding regulatory and operational staffing, we have modified this Condition by adding a prudent business practice standard and a termination date of five years after closing. A prudent business practice standard is appropriate and, as discussed previously, five years will provide an ample period of heightened post-closing scrutiny.
- Condition 23 (Customer Surveys) — with regard to customer surveys, we have modified this Condition to include a prudent business provision and eliminated the portion relating to the types of questions, as this should be a management decision.
- Condition 26 (Cost Allocation Manual) — with regard to a Cost Allocation Manual (“CAM”), we have modified this condition to require an updated CAM to be filed by April 30 of each year, rather than requiring filing of any changes within 10 days. In addition, we have limited the update requirement for structural changes to Intermediate Newco and companies below

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Intermediate Newco. We have moved the requirement from Staff-Proposed Condition No. 27 — that the CAM must include a list of all goods and services that CWSNC provides to an affiliate, or is provided by an affiliate to CWSNC, on a frequent or continuing basis — to this Condition 26. This filing schedule will provide adequate notice while streamlining the companies’ filing requirements.

- Condition 27 (Charges for and Allocations of the Costs of Affiliate Transactions) — with regard to charges for and allocations of the costs of affiliate transactions, we agree that affiliate transactions should be directly charged where practicable and limited the entities to which this Condition applies, consistent with the Joint Applicants’ opening comments in this rebuttal testimony.
- Condition 28 (Transfer Pricing Between Affiliates) — regarding transfer pricing between affiliates, we have accepted this proposed Condition, with the exception of requirements tied to fair market value. Shared services companies exist to provide services efficiently to a group of companies at a lower cost than can outside vendors. However, proving that each and every service provided is lower cost than fair market value would be extremely burdensome and costly.

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- Condition 29 (Transfer of Services, Functions, Department or Assets) — we have modified this proposed Condition relating to transfers of services, functions, departments, or assets in two minor ways. First, we have made it an annual filing requirement rather than 60 days prior to any such transfer. Second, we have added a materiality requirement. This streamlined filing requirement and a materiality standard will give the Commission and the Public Staff adequate insight into future changes without unduly burdening the companies.
- Condition 30 (Affiliated Agreements) — we have modified this Condition relating to affiliate agreements by adding a materiality requirement.
- Condition 31 (Affiliate Transactions Report) — with respect to affiliate transactions reporting, we have simply made this requirement commence on April 30, 2025 (for activities in calendar year 2024), rather than March 31, 2024 (for activities in calendar year 2023), because we do not expect the Proposed Transaction before the fourth quarter of 2023 or early 2024. Should the Proposed Transaction close in the fourth quarter of 2023, a report covering only one or two months would provide limited value to the Public Staff and the Commission.

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- Condition 32 (Service Area Reporting) — it is not clear whether the report contemplated would be limited to certificates of public convenience and necessity granted in the year covered by the report or during some other period. The Joint Applicants propose clarifying Staff-Proposed Condition No. 32 by adding clarifying language to the end: “during the prior calendar year.”
- Condition 33 (Geographic Information Systems (“GIS”) Mapping) —the Joint Applicants propose modifying this Condition to require CWSNC provide a confidential, downloaded version of the GIS data from CWSNC’s system in lieu of access. There are cybersecurity risks associated with granting non-company personnel direct access to CWSNC’s GIS system. If, for example, the Public Staff’s or the Commission’s systems were to be compromised, that might give the threat actor(s) access (or easier access) to CWSNC’s systems, and vice versa.
- Condition 34 (Emergency Operator System) — the Joint Applicants have added a clarification to note that this Condition is not intended to, and does not, modify any of the provisions in the respective Emergency Operator orders issued by the Commission, specifically including the Company’s right to petition

- 1 the Commission at any time to be discharged as the Emergency
2 Operator, and the Commission's obligation to approve same.¹¹
- 3 • Condition 35 (Customer Assistance Program ("CAP")) —
4 regarding a CAP, we have accepted this condition, except for the
5 proposed requirement that the companies make an annual
6 goodwill contribution to fund the customer assistance program
7 until the effective date of rates in CWSNC's next general rate
8 case (or otherwise ordered by the Commission). It is reasonable
9 to ask the companies to fund the initial development of the
10 program, but, once developed with shareholder dollars and
11 implemented, the program's administration should be funded
12 through rates.
 - 13 • Condition 36 (Leadership Retention) — we have adjusted the
14 Condition to require a notification to the Commission within 10
15 business days after changes to key leadership positions, as
16 opposed to notification 60 days prior to the change. This allows
17 for the possibility of changes that are not known as far in advance
18 as Staff's proposal. We also modified the time period for this
19 Condition to five years, consistent with the Joint Applicants'
20 proposal on other Conditions noted above.

¹¹ See, for example, paragraph 31(f), page 7, in the Commission's Order Appointing Emergency Operator for Mountain Air, Docket No. W-1148 Sub 28.

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- Condition 37 (Operator Development and Retention) — the Joint Applicants propose modifying this Condition to require CWSNC to report annually on April 30, for the five years after closing of the Proposed Transaction, on efforts to develop and retain qualified operators. In addition, we have eliminated the requirement that CWSNC “research” the labor market as this would be overly burdensome and is not well-defined. Requiring CWSNC to “research” the labor market independently of ensuring appropriate staffing is an unreasonably burdensome and costly requirement and is also an unwarranted intrusion on the Company’s operational management. These are management decisions that can certainly be analyzed later for prudence in the appropriate context. There is no evidence suggesting this requirement is necessary or would be beneficial to CWSNC’s service or customers.

V. BUCKET THREE – AGREEABLE CONDITIONS WITH
SUBSTANTIVE MODIFICATIONS

Q. PLEASE IDENTIFY THE STAFF-PROPOSED CONDITIONS TO WHICH THE JOINT APPLICANTS HAVE MADE MORE SUBSTANTIVE MODIFICATIONS.

A. The “Bucket Three” conditions the Joint Applicants have materially modified are the following:

- 1 • Condition 7 (Protection Against Decreased Creditworthiness);
- 2 • Condition 17 (Mergers and Acquisitions); and
- 3 • Condition 25 (Shared Goods and Services).

4 **Q. PLEASE WALK THROUGH THE “BUCKET THREE” CONDITIONS**
 5 **THAT JOINT APPLICANTS HAVE MATERIALLY MODIFIED AND**
 6 **EXPLAIN THE PROPOSED MODIFICATIONS.**

7 A. The “Bucket Three” conditions which the Joint Applicants have
 8 materially modified are briefly summarized below (and provided in full
 9 text on Joint Applicants Rebuttal Exhibit 1):

- 10 • Condition 7 (Protection Against Decreased Creditworthiness) –
 11 The Joint Applicants propose modifying this Condition. Joint
 12 Applicant witness Lapson addresses Staff-Proposed Condition 7
 13 in her rebuttal testimony, and the Joint Applicants address the
 14 SRF portion of this Commitment. The Commitment is now
 15 consistent with witness Denton’s rebuttal testimony in Docket W-
 16 354, Sub 400, wherein CWSNC committed to applying for SRF
 17 “when possible and where feasible.”
- 18 • Condition 17 (Mergers and Acquisitions) – CWSNC confirms that
 19 it will comply with N.C.G.S. § 62-111(a). However, we consider
 20 this a Bucket Three modification because it limits the scope of
 21 Public Staff’s proposal, which would have required CWSNC to
 22 make a Section 62-111(a) application at least 180 days before

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the proposed closing date of the merger or business combination. This is not always feasible and, more importantly, not required by North Carolina law. The Joint Applicants will, of course, comply with North Carolina law concerning mergers and acquisitions, as we have done with the current proceeding. But it is unreasonable to add an extra-statutory requirement that any such application must be filed 180 or more days before the proposed transaction closing date. While large mergers or combinations will likely not close within 180 days, smaller transactions certainly could be completed in less than 180 days. In addition, as written, Staff's Condition 17 is overbroad because it could apply to any acquisition or reorganization upstream from CWSNC that would neither materially affect nor result in a change in control of CWSNC. The Joint Applicants propose modifying Staff's Condition 17 to make clear that the Joint Applicants will comply with N.C.G.S. § 62-111(a). The Joint Applicants propose removing the language requiring the filing "at least 180 days before the proposed closing date..." The modified language will be sufficient to ensure Joint Applicants' compliance with applicable North Carolina law.

- Condition 25 (Shared Goods and Services) – this Condition, as drafted, would require CWSNC to provide the Commission with a

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list of shared goods and services, along with the basis for each, within 90 days of Commission approval of the Staff-Proposed Conditions. The timing of this proposed Condition is not feasible. As we stated in our direct testimony, we plan to use existing affiliate agreements for shared goods and services post-closing until a new cost allocation methodology is developed and any applicable changes to existing affiliate agreements are needed. At that time, a new shared services agreement will be presented to the Commission for approval, consistent with the requirements of N.C.G.S. § 62-153. Accordingly, this Condition should be modified such that its need is obviated by the Joint Applicants' Condition 30.

Q. DOES THIS CONCLUDE YOUR PREPARED REBUTTAL TESTIMONY?

A. Yes, it does. However, we reserve the right to supplement this testimony as necessary if new information becomes available.

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PS Condition #	Public Staff Condition	Bucket No.
1	Transaction Costs and Accounting	2
2	Costs to Achieve Merger Savings	2
3	Non-Consummation of Merger	1
4	Inclusion of Cost Savings in Future Rate Proceedings	2
5	Hold Harmless Commitment	2
6	Distributions	2
7	Protection Against Decrease in Creditworthiness	3
8	Notice of Certain Investments	2
9	Notice of Certain Investments-Intermediate Newco	2
10	Notice by CWSNC of Default or Bankruptcy of an Affiliate	2
11	Common Equity Capital	1
12	Post-Closing Financial Information	2
13	Meetings with Public Staff	2
14	Access to Books and Records	1
15	Changes to Board of Directors or Management	2
16	Notice and Consultation with Public Staff Regarding Proposed Structural and Organizational Changes	2
17	Mergers and Acquisitions	3
18	Financial Statements	2
19	Obligations with Affiliates	2
20	Capital Budgets	2
21	Regulatory Reporting Requirements	1
22	Regulatory and Operational Staffing	2
23	Customer Surveys	2
24	Overall Service Quality	1
25	Shared Goods and Services	3
26	Cost Allocation Manual	2
27	Charges for and Allocations of the Costs of Affiliate Transactions	2
28	Transfer Pricing Between Affiliates	2
29	Transfer of Services, Functions, Employees, or Assets	2
30	Affiliated Agreements	2
31	Affiliate Transactions Report	2
32	Service Area Reporting	2
33	Geographic Information Systems (GIS) Mapping	2
34	Emergency Operator System	2
35	Customer Assistance Program (CAP)	2
36	Leadership Retention	2
37	Operator Development and Retention	2

Notes:

Bucket One – Agreeable Conditions Without Modification

Bucket Two – Agreeable Conditions With Non-Substantive Modifications Or Clarification

Bucket Three – Agreeable Conditions With Substantive Modifications

These Regulatory Conditions set forth commitments made by Corix Infrastructure (US) Inc. (“Corix US”), Intermediate Newco,¹ and Carolina Water Service, Inc. of North Carolina

¹ Intermediate Newco and SWMAC Holdco are entities that have not yet been formed but will be formed prior to the closing of the Proposed Transaction. As the Commission’s approval of the Proposed Transaction will be conditioned on the Regulatory Conditions, the Regulatory Conditions will apply to Intermediate Newco and SWMAC Holdco only upon the closing of the Proposed Transaction.

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("CWSNC" and, together with Corix US and Intermediate Newco, the "Regulatory Condition Parties"), as a precondition of approval of the application by CWSNC, Corix US, and SW Merger Acquisition Corp. pursuant to N.C. Gen. Stat. § 62-111(a) for authority to engage in their proposed business combination transaction ("Proposed Transaction"). These Regulatory Conditions, which become effective only upon the closing of the Proposed Transaction, shall be interpreted in a manner that ensures CWSNC's customers (a) are protected from any known adverse effects from the Proposed Transaction, (b) are protected as much as possible from potential costs and risks resulting from the Proposed Transaction, and (c) receive sufficient known and expected benefits to offset any potential costs and risks resulting from the Proposed Transaction.

Corix Infrastructure Inc. ("CII") and SWMAC Holdco, as well as any additional or successor entities with control over Corix US, Intermediate Newco or CWSNC (collectively, the "Parent Entities") hereby acknowledge and consent to these Regulatory Conditions agreed and entered into by the Regulatory Condition Parties. The Parent Entities further commit not to cause the Regulatory Conditions Parties to violate such Regulatory Conditions and not to prevent the Regulatory Condition Parties from taking commercially reasonable actions to comply with the Regulatory Conditions, for so long as such Regulatory Conditions remain in effect and applicable to the Regulatory Condition Parties. This consent and acknowledgement of the Parent Entities does not constitute a general consent to an expansion of, and shall not be interpreted to expand, the North Carolina Utilities Commission's jurisdiction over the Parent Entities beyond that, if any, established by Chapter 62 of the North Carolina General Statutes.

For purposes of these Regulatory Conditions, the North Carolina Utilities Commission is referred to as "the Commission," and the Public Staff – North Carolina Utilities Commission is referred to as "the Public Staff." "Affiliate" shall mean Corix US and any business entity of which ten percent (10%) or more of the voting securities or interests are owned, directly or indirectly, by Corix US, including but not limited to CWSNC and Intermediate Newco. "Transaction Costs" shall mean:

- The costs of securing formal written evaluations of the transaction;
- The costs of structuring the transaction and obtaining tax advice on the structure of the transaction;
- The costs of negotiating, preparing, and reviewing the Transaction Agreement;
- The costs of retained consultants and advisors to evaluate the transaction and perform due diligence;
- Legal and other fees of completing pre-closing restructuring;
- Legal and other fees to close the proposed transaction;
- Financial advisor fees; and
- The costs of securing regulatory approvals.

1. **Transaction Costs and Accounting.** Regardless of whether such costs are capitalized, deferred or expensed, Transaction Costs shall be excluded from the regulated expenses of CWSNC for Commission financial and ratemaking purposes. CWSNC shall file a summary report of its financial accounting for Transaction Costs within 180 days after the Proposed Transaction closes and within 180 days after the last quarter in which any additional Transaction Costs are incurred.
 - a. **Incentive and Retention Payments.** CWSNC shall exclude incentive and retention payments directly related to and paid solely because of the Proposed Transaction from the regulated expenses of CWSNC for Commission financial and ratemaking purposes.
 - b. **Accounting.** The Proposed Transaction should not result in any writeups, write-offs, or restatements of financial results on CWSNC's books and

records. However, if any such writeups, write-offs, or restatements of financial results do occur, and are required to be recorded on CWSNC's books and records pursuant to GAAP, then any such writeups, write-offs, or restatements on CWSNC's books and records will be excluded for ratemaking purposes.

2. **Costs to Achieve Merger Savings.**

CWSNC may recover the costs of integrating administrative and general functions ("Integration Costs") to the extent that the benefits of integrating administrative and general functions meet or exceed such costs. To the extent Integration Costs exceed benefits ("Net Costs"), CWSNC, Corix US and Intermediate Newco acknowledge that CWSNC will not recover Net Costs. After Integration Costs and benefits are reflected in the next two general rate cases, CWSNC will discontinue tracking those costs and benefits and will track only costs and benefits incremental to those reflected in rates.

For the purposes of future general rate case proceedings for CWSNC, CWSNC and the Public Staff shall not be limited to or constrained by the provisions of these Regulatory Conditions in asserting or sustaining arguments regarding the proper treatment of integration costs and related cost savings in setting just and reasonable rates for CWSNC.

3. **Non-Consummation of Merger.** If the Proposed Transaction is not consummated, neither the cost, nor the receipt, of any termination payment or monetary damages shall be allocated to CWSNC or included in regulated expenses of CWSNC for Commission financial reporting and ratemaking purposes. CWSNC's customers shall not otherwise bear any direct expenses or costs associated with a failed Proposed Transaction.

4. **Inclusion of Costs Savings in Future Rate Proceedings.** See No. 2 above.

5. **Hold Harmless Commitment.** The Proposed Transaction shall be effectuated in a manner designed to prevent harm to CWSNC's ratepayers, although it is recognized that matters not currently foreseeable could possibly have the potential to negatively impact CWSNC ratepayers in the future. Notwithstanding this, the Regulatory Condition Parties (as well as any successor entities exercising control over CWSNC) shall take commercially reasonable actions to hold CWSNC's customers harmless from the effects of the Proposed Transaction.²

6. **Distributions.** Absent Commission approval, dividends from CWSNC will be no more than 100 percent of net income. This Regulatory Condition shall continue for a period of five years after the Proposed Transaction closes. The Commission retains the right to impose future limitations on distributions of CWSNC if the public interest requires, as provided pursuant to applicable law and prior Commission orders.

7. **Protection Against Decrease Creditworthiness.** Intermediate Newco shall be established with a target investment grade capital structure profile and operated in a way that is consistent with maintaining an investment grade profile. Within three years after the Proposed Transaction closes, Intermediate Newco shall cause Corix Regulated Utilities (US) Inc. to evaluate the costs and benefits of (a) obtaining a credit rating and (b) accessing debt capital through publicly traded debt instruments instead of private placements. CWSNC will continue to evaluate and look for opportunities to apply for SRF funds when possible and where feasible.

² CWSNC, Intermediate Newco and Corix US reserve the right to dispute future assertions by the Public Staff that any particular future action or event may cause or represent harm to CWSNC's customers was attributed to the Proposed Transaction for which relief could be granted under this Condition.

8. **Notice of Certain Investments.** For a period of five years after the Proposed Transaction closes, Corix US and Intermediate Newco shall cause CWSNC to file annually by April 30 with the Commission and serve upon the Public Staff a list of all legal entities directly or indirectly controlled by Corix US; such list shall identify any entity or asset acquisitions representing ten percent (10%) or more of Intermediate Newco's book capitalization.
9. **Notice of Certain Intermediate Newco Investments.** For a period of five years after the Proposed Transaction closes, Intermediate Newco shall cause CWSNC to file a notice with the Commission within ten (10) business days after Intermediate Newco makes any application to any state utility regulatory commission to acquire a controlling interest in a public utility.
10. **Notice by CWSNC of Default or Bankruptcy of an Affiliate.** If Corix US, Intermediate Newco or an Affiliate of CWSNC experiences a default on an obligation that is material to Corix US or Intermediate Newco or files for bankruptcy, and such bankruptcy is material to Corix US, Intermediate Newco or CWSNC, CWSNC shall notify the Commission of the event as soon as possible but not later than ten days after such event.
11. **Common Equity Capital.** Until the final order is issued in CWSNC's next general rate case, CWSNC will maintain common equity capital at levels equal to or greater than 45% of total adjusted capital (including common equity, long-term debt, long-term capital leases, and current maturities of long-term debt). No equity distributions, whether by dividend or other form, will be allowed that would result in equity capital falling below this minimum level during the specified period, without prior approval of the Commission. Notwithstanding the foregoing, CWSNC shall maintain the right to petition the Commission for an exception to this Regulatory Condition.
12. **Post-Closing Financial Information.** CWSNC shall file pre- and post-Proposed Transaction closing balance sheets and the closing journal entries, including relevant descriptions and disclosures for the transactions recorded, for Intermediate Newco, Corix Regulated Utilities (US) Inc., SouthWest Water Company, and itself, as soon as practicable but not later than 30 days after the completion of the first year's audit after the closing of the Proposed Transaction.
13. **Meetings with Public Staff.** For five years following the closing of the Proposed Transaction, if requested, CWSNC and key leadership from Intermediate Newco shall meet annually with the Public Staff to discuss CWSNC's financial condition and results, service quality initiatives and results, customer service changes, and potential new tariffs.
14. **Access to Books and Records.** In accordance with and to the extent provided by North Carolina law, the Commission and the Public Staff shall continue to have access to the books and records of CWSNC and its Affiliates.
15. **Changes to Boards of Directors.** For a period of five years following the closing of the Proposed Transaction, CWSNC shall notify the Commission annually by April 30 of any changes to the membership of the Board of Directors of Corix US, Intermediate Newco, or CWSNC.
16. **Notice to Public Staff Regarding Proposed Structural and Organizational Changes.** Upon request, the Regulatory Condition Parties shall meet and consult with, and provide requested relevant data to, the Public Staff (a) regarding plans for material changes in CWSNC's or any of its Affiliates' corporate structure, (b) the expected or potential impact of such changes on CWSNC's rates, operations

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and service, and (c) plans to mitigate the adverse impacts, if any, such changes might have on CWSNC's customers. CWSNC shall promptly inform the Public Staff after any material change in CWSNC's corporate structure or the corporate structure of any of its Affiliates.

17. **Mergers and Acquisitions.** CWSNC will comply with N.C. Gen. Stat. § 62-111(a).
18. **Financial Statements.** For five years following the closing of the Proposed Transaction, CWSNC will provide to Public Staff, within 30 days of their completion, a confidential copy of audited financial statements of Corix Regulated Utilities (US) Inc. and Intermediate Newco, if such companies have audited financial statements.
19. **Obligation with Affiliates.** Without the Commission's prior approval, CWSNC will not guarantee any debt or credit instruments of Intermediate Newco or any Affiliate unless such debt is incurred for the specific purpose of CWSNC's systems or operations. The proceeds of any debt incurred by CWSNC will only be used for purposes specific to its systems or operations.
20. **Capital Budgets.** CWSNC shall maintain a level of capital and operational support in North Carolina necessary to provide safe, efficient, and reliable service at reasonable rates. For a period of five years after the Proposed Transaction closes, CWSNC shall provide to the Public Staff, on a confidential basis and for informational purposes, its internally approved capital budget for new, expanded, or upgraded water and sewer facilities in North Carolina by April 30 of every year.
21. **Regulatory Reporting Requirements.** CWSNC shall comply with all regulatory reporting requirements set forth in Attachment A.
22. **Regulatory and Operational Staffing.** CWSNC will use prudent business practices to maintain sufficient, adequately trained personnel to ensure that regulatory requirements are complied with in a timely and accurate manner. For five years following the closing of the Proposed Transaction, CWSNC shall notify the Public Staff when there is any change to the Director of Operations or shared services Director of Regulatory Affairs. Each year by April 30, for five years following the closing of the Proposed Transaction, CWSNC shall provide the Public Staff with an updated directory of personnel, including titles, phone numbers, and e-mail addresses.
23. **Customer Surveys.** CWSNC shall informally survey its customers regarding their satisfaction with CWSNC's public utility service. CWSNC will use prudent business practices to incorporate this information, if necessary, into its processes, programs, and services.
24. **Overall Service Quality.** CWSNC shall continue its commitment to provide safe, reliable, and affordable water and sewer service and effective customer service support.
25. **Shared Goods and Services.** See No. 30.
26. **Cost Allocation Manual.** CWSNC shall keep on file with the Commission a cost allocation manual ("CAM") with respect to goods or services provided between and among CWSNC and its Affiliates. The CAM shall be updated annually, and the revised CAM shall be filed with the Commission no later than April 30 of the year that the CAM is to be in effect. The CAM shall also be updated, if necessary, whenever the structure of Intermediate Newco or companies below Intermediate Newco changes. The CAM shall include a list of all goods and services that

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CWSNC provides to an Affiliate or is provided by an Affiliate to CWSNC on a frequent or continuing basis.

27. **Charges for and Allocations of the Costs of Affiliate Transactions.** Affiliate transactions will be directly charged where practicable. The CAM shall encompass transactions, allocations, and the bases for the allocations occurring (a) at the Intermediate Newco level and below and (b) with any Affiliate with which CWSNC has a frequent or continuing cost allocation or transaction relationship, either directly or indirectly, including any and all service companies.
28. **Transfer Pricing Between Affiliates.** For untariffed goods and services provided by CWSNC to a non-utility Affiliate, the transfer price paid to CWSNC shall be set at the higher of market value or CWSNC's cost. For untariffed goods and services provided to CWSNC by a non-utility Affiliate, the transfer price charged by a non-utility Affiliate to CWSNC shall be set at the lower of market value or the non-utility Affiliate's cost. Services provided by CWSNC to utility Affiliates or by utility Affiliates to CWSNC shall be transferred at the supplier's cost, unless otherwise directed by order of the Commission. Services provided by a service company to CWSNC shall be provided at cost.
29. **Transfer of Services, Functions, Department or Assets.** CWSNC shall file annually by April 30 with the Commission notice of the transfer of any services, functions, departments, or assets from CWSNC to a service company or another Affiliate, or any subsequent transfer of any services, functions, employees, or assets from CWSNC to a service company or another Affiliate that would have a material effect on CWSNC's customers.
30. **Affiliate Agreements.** CWSNC shall file pursuant to N.C.G.S. § 62-153 agreements for the provision and receipt of goods or services between and among CWSNC and its Affiliates. All such agreements that involve payment of fees or other compensation by CWSNC shall require acceptance and authorization by the Commission and shall be subject to any other Commission action required or authorized by North Carolina law and the Rules and orders of the Commission. Prior to making any material changes to existing agreements, CWSNC shall file such changes with the Commission.
31. **Affiliate Transaction Report.** CWSNC shall file an annual report of affiliated transactions with the Commission in a format prescribed by the Commission. The first such report on affiliated transactions shall be filed on April 30, 2025, for activity through December 31, 2024, and annually thereafter on April 30 for the activity from January 1 through December 31 of the preceding year.
32. **Service Area Reporting.** CWSNC shall file an annual report on April 30 of each year detailing the Company's North Carolina service areas with the associated Commission docket numbers for which a certificate of public convenience and necessity area was granted or a contiguous extension was recognized during the prior calendar year.
33. **Geographic Information Systems (GIS) Mapping.** CWSNC shall provide the Public Staff and the Commission a confidential downloaded version of CWSNC's GIS interactive map of North Carolina service areas.
34. **Emergency Operator System.** CWSNC shall continue to serve as emergency operator of the following systems: Harrco Utility Corporation (Docket No. W-796, Sub 12); Cross-State Development Company (Docket No. W-408, Sub 9); Outer Banks/Kinnakeet Associates, LLC (Docket Nos. W-1125, Subs 9 and 10); and Mountain Air Utilities Corporation (Docket No. W-1148, Sub 20). This Regulatory Condition shall remain in effect for the lesser of three years after the consummation

of the Proposed Transaction or until CWSNC is relieved of its requirement by future Commission order. This condition is not intended to, and does not, modify any of the provisions in the respective Emergency Operator orders issued by the Commission, specifically including the Company's right to petition the Commission at any time to be discharged as the emergency operator, and the Commission's obligation to approve same.

35. **Customer Assistance Program (CAP)**. CWSNC, at its own cost, shall develop a low-income customer assistance program ("CAP") and file it in a separate docket within one year of consummation of the Proposed Transaction. CWSNC shall work with the Public Staff to develop a CAP proposal filing that shall include, but not be limited to, the following information: (1) customer eligibility criteria; (2) number of customers in need; (3) number of customers the program can assist based on funding; (4) summary of similar programs used by CWSNC and its regulated affiliate(s); and (5) description of how the program will be administered.
36. **Leadership Retention**. For a period of five years following the closing of the Proposed Transaction, CWSNC shall notify the Commission within 10 business days after a change to the President, any Vice President and Corporate Secretary of CWSNC.
37. **Staff No. 37. Operator Development and Retention**. CWSNC shall report annually on April 30, for the next five years, on efforts to develop and retain qualified operators.

ATTACHMENT A

1. CWSNC will remain a public utility subject to regulation by the Commission pursuant to the North Carolina Public Utilities Act and the Commission's regulations.
2. CWSNC's Quarterly Reports as Emergency Operator of the Harrco (W-796, Sub 12), Cross-State (W-408, Sub 9), Mountain Air (W-1148, Sub 20), and Outer Banks/Kinnakeet Associates, LLC (W-1125, Subs 9 and 10) systems for the July - September 2021 calendar quarter are due to be filed by Monday, October 31st.
3. CWSNC's Quarterly WSIC/SSIC Reports for the July - September 2022 calendar quarter are due to be filed in Docket No. W-354, Sub 384A by Tuesday, November 15th.
4. M-100, Sub 179 - NCUC Online Monthly Survey on Public Utility Delinquencies in Payments and Disconnections of Service - These electronic reports are due by no later than the 15th day of each month.
5. CWSNC's Quarterly Reports as Emergency Operator of the Harrco (W-796, Sub 12), Cross-State (W-408, Sub 9), Mountain Air (W-1148, Sub 20), and Outer Banks/Kinnakeet Associates, LLC (W-1125, Subs 9 and 10) systems for the October – December 2022 calendar quarter are due to be filed by Tuesday, January 31, 2023.
6. CWSNC's Quarterly WSIC/SSIC Reports for the October – December 2023 calendar quarter are due to be filed in Docket No. W-354, Sub 384A by Wednesday, February 15, 2023.
7. CWSNC's annual report regarding the Company's Sub 384 Water Efficiency Pilot Program should be filed by a target date of Monday, April 17, 2023.
8. CWSNC's Quarterly Reports as Emergency Operator of the Harrco (W-796, Sub 12), Cross-State (W-408, Sub 9), Mountain Air (W-1148, Sub 20), and Outer Banks/Kinnakeet Associates, LLC (W-1125, Subs 9 and 10) systems for the January - March 2023 calendar quarter are due to be filed by Friday, April 28, 2023.
9. CWSNC's Quarterly WSIC/SSIC Reports for the January - March 2023 calendar quarter are due to be filed in Docket No. W-354, Sub 384A by Monday, May 15, 2023.
10. CWSNC's Semi-Annual Report regarding the Company's fee-free payment option for residential customers is due to be filed by Wednesday, May 31, 2023.
11. M-100, Sub 179 - NCUC Online Monthly Survey on Public Utility Delinquencies in Payments and Disconnections of Service - These electronic reports are due by no later than the 15th day of each month.
12. In addition, I assume that because of your pending multi-year rate case, the Company does not intend to file an application for a WSIC/SSIC surcharge by Monday, January 30, 2023, for WSIC/SSIC rates proposed to become effective on April 1, 2023, for eligible water and sewer system improvements which were complete and in-service by December 31, 2023
13. CWSNC's first Quarterly Danby, South Carolina service area Progress Report (to be jointly filed with the Public Staff) required by Ordering Paragraph No. 27 of the Sub 400A Rate Case Order is due to be filed in Docket No. W-354, Sub 400A by Friday, July 28, 2023. This report will cover the three-month period ending June 30, 2023.

Joint Applicants Rebuttal Exhibit 1

Docket No W-354, Sub 412

14. CWSNC's Quarterly Reports as Emergency Operator of the Harrco (W-796, Sub 12), Cross-State (W-408, Sub 9), Mountain Air (W-1148, Sub 20), and Outer Banks/Kinnakeet Associates, LLC (W-1125, Subs 9 and 10) systems for the April - June 2023 calendar quarter are due to be filed by Monday, July 31, 2023.
15. CWSNC's first Quarterly WSIP Report required by Ordering Paragraph No. 16 of the Sub 400 Rate Case Order and NCUC Rule R1-17A(j) is due to be filed in Docket No. W-354, Sub 400A by Monday, August 14, 2023. This report will cover the three-month period ending June 30, 2023.
16. CWSNC's Quarterly WSIC/SSIC Reports for the April - June 2023 calendar quarter are due to be filed in Docket No. W-354, Sub 400A by Tuesday, August 15, 2023.

Note:

These Regulatory Reporting Requirements will remain in effect until such time that CWSNC is relieved from such requirement.

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-354, SUB 412

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	REBUTTAL TESTIMONY OF
Application by Carolina Water Service,)	ELLEN LAPSON ON BEHALF
Inc. of North Carolina, along with Corix)	OF JOINT APPLICANTS
Infrastructure (US) Inc. and SW Merger)	
Acquisition Corp., for Approval of a)	
Business Combination Transaction)	

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OFFICIAL COPY

Jul 14 2023

1 **I. WITNESS INTRODUCTION AND BACKGROUND**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Ellen Lapson, CFA. My business address is 370 Riverside
4 Drive, New York, New York 10025.

5 **Q. ARE YOU THE SAME ELLEN LAPSON WHO PREVIOUSLY FILED**
6 **DIRECT TESTIMONY ON NOVEMBER 23, 2022, IN THIS**
7 **PROCEEDING?**

8 A. Yes.

9 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

10 A. My testimony responds to the testimony filed by the Public Staff – North
11 Carolina Utilities Commission (“Public Staff”). More specifically, I
12 address Public Staff’s proposed Regulatory Conditions Nos. 7 and 19
13 filed as Public Staff Exhibit 1 (“Staff-Proposed Conditions”) to the Joint
14 Testimony of Public Staff witnesses Lynn Feasel, June Chiu, Lindsay Q.
15 Darden, and John R. Hinton on June 30, 2023.

16
17 **II. RESPONSE TO PUBLIC STAFF’S PROPOSED CONDITIONS**

18 **Q. PLEASE PROVIDE YOUR OPINION CONCERNING PUBLIC**
19 **STAFF’S REGULATORY CONDITION 7.**

20 A. I have several concerns with this proposed regulatory condition. First,
21 the pro-forma financial ratio of 10.2% FFO to Debt that Public Staff cites
22 – and then presses into service as a threshold ratio – is merely a pro-
23 forma of 2021 financial ratios of two different companies which were

1 unrelated companies in 2021. Pressing the pro-forma ratio into service
2 as a benchmark is both arbitrary (why assume that 2021 should
3 constitute the threshold?) and hypothetical (i.e., the combined company
4 is an entity that has never existed and never borrowed any money or
5 raised any capital).

6 Second, we have no basis to imagine that the investors who lent
7 money to either of the merger partner companies in the past based their
8 investment decisions upon an expectation of FFO to Debt of
9 10.2%. There is no reason to expect that Intermediate Newco's future
10 cost of borrowing would be greater if the level of FFO to Debt is less
11 than 10.2%. That is an entirely artificial threshold not based on any
12 factual basis.

13 Third, when financial ratios are used as representations of
14 creditworthiness in loan covenants or in merger conditions, it is
15 conventional that the level of the threshold ratio allows leeway for a
16 decline in the ratio, since financial ratios naturally vary from period to
17 period. The threshold ratio should not be set at a level that admits no
18 leeway. If the North Carolina Utilities Commission (the "Commission")
19 wishes to establish a lower debt coverage threshold, I would naturally
20 look to the S&P financial ratio benchmarks. It might be reasonable to
21 establish a lower threshold at the border between the range that S&P
22 calls "Aggressive" and the range called "Highly Leveraged." That border

1 is the ratio of FFO to Debt of less than 6%. Falling below 6% FFO to
2 Debt would be an indicator of adverse credit implications.

3 Finally, the remedy cited in Staff-Proposed Condition No. 7 is
4 vague and unworkable because it does not consider that financial
5 markets change over time, and there could be higher or lower costs of
6 debt in the future because of changes in market conditions. It would be
7 difficult or perhaps even impossible to segregate how much the future
8 interest cost is affected by change in "creditworthiness" versus how
9 much is a product of changed market environment. This would set the
10 stage for a regulatory dispute over how much the change in future
11 interest costs results from a change in "creditworthiness" versus other
12 factors.

13 **Q. HOW DO THE JOINT APPLICANTS PROPOSE TO MODIFY STAFF-**
14 **PROPOSED REGULATORY CONDITION NO. 7?**

15 **A.** The Joint Applicants propose to simplify this condition to require that
16 Intermediate Newco be established with a target investment grade
17 capital structure and operated so as to maintain an investment grade
18 profile, consistent with the commitment in the Joint Application. In
19 addition, the Joint Applicants are willing to commit to, within 3 years after
20 closing, evaluate the costs and benefits of (a) obtaining a credit rating
21 for Corix US, and (b) accessing debt through public debt markets rather
22 than private placements. Finally, the Joint Applicants are willing to
23 commit to use reasonable efforts to obtain grants or revolving fund

1 loans. It is my understanding that this latter commitment would be in
 2 addition to a commitment in CWSNC’s last rate case (Docket No. W-354
 3 Sub 400) to seek State Revolving Funds for certain projects.

4 It is my opinion that the Joint Applicants’ proposal to modify Staff-
 5 Proposed Condition No. 7 adequately protects CWSNC’s customers. As
 6 modified by the Joint Applicants, the condition ensures that Intermediate
 7 Newco is operated in a manner that is consistent with maintaining an
 8 investment grade profile. It ensures that Corix Regulated Utilities (US)
 9 Inc. – CWSNC’s direct parent company and the company to which
 10 CWSNC looks for the purposes of setting its capital structure and cost
 11 of debt in rate setting proceedings – will analyze the costs and benefits
 12 of obtaining a credit rating and using public instead of private debt
 13 markets. Finally, CWSNC is committed to applying for SRF “when
 14 possible and where feasible.” Accordingly, I recommend that the
 15 Commission adopt the Joint Applicants’ modifications to Staff-Proposed
 16 Condition No. 7.

- 17
- 18 **Q. HAVE YOU A RESPONSE TO ANY OTHER STAFF CONDITIONS?**
- 19 **A.** Yes. Staff-Proposed Regulatory Condition No. 19 relates to obligations
 20 with affiliates. The Joint Applicants commit that, without the
 21 Commission’s prior approval, CWSNC will not guarantee any debt or
 22 credit instruments of Intermediate Newco or any Affiliate, unless such
 23 debt is incurred for the specific purpose of CWSNC’s system or

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operations. Also, the proceeds of any debt incurred by CWSNC will be used only for purposes specific to its system or operations. This modification will enable joint or consolidated financings while protecting CWSNC customers by ensuring any CWSNC debt guarantees are limited to debt to be used for the CWSNC system for the benefit of CWSNC customers. In my view, this is a reasonable approach that is consistent with preserving CWSNC’s creditworthiness.

Q. DOES THIS CONCLUDE YOUR PREPARED REBUTTAL TESTIMONY?

A. Yes, it does. However, I reserve the right to supplement this testimony due to new information becoming available.

CERTIFICATE OF SERVICE

I hereby certify that I have today served a copy of the foregoing Joint Rebuttal Testimony (DeStefano, Bahr and Denton) and Exhibit 1, plus the Rebuttal Testimony of Ellen Lapson, on Gina C. Holt of the Public Staff of the North Carolina Utilities Commission, in accordance with North Carolina Utilities Commission Rule R1-39, by means of electronic delivery upon agreement of the receiving party.

This the 14th day of July, 2023.

Electronically Submitted
/s/Jo Anne Sanford
N.C. State Bar No. 6831

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Inc. of North Carolina**