



**NORTH CAROLINA  
PUBLIC STAFF  
UTILITIES COMMISSION**

June 30, 2023

Ms. A. Shonta Dunston, Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4300

Re: Docket No. W-354, Sub 412 – Application for Approval of Business Combination between Carolina Water Service, Inc. of North Carolina/ Corix Infrastructure (US) Inc., and SW Merger Acquisition Corp.

Dear Ms. Dunston:

Attached for filing on behalf of the Public Staff in the above-referenced docket is the joint testimony of Lynn Feasel, Financial Manager, Accounting Division; June Chui, Public Utilities Regulatory Analyst, Accounting Division, Lindsay Q. Darden, Public Utilities Engineer, Water, Sewer, and Telephone Division, and John R. Hinton, Director, Economic Research Division.

By copy of this letter, I am forwarding a copy to all parties of record by electronic delivery.

Sincerely,

Electronically submitted  
/s/ Elizabeth D. Culpepper  
Staff Attorney  
[elizabeth.culpepper@psncuc.nc.gov](mailto:elizabeth.culpepper@psncuc.nc.gov)

/s/ James Bernier, Jr.  
Staff Attorney  
[james.bernier@psncuc.nc.gov](mailto:james.bernier@psncuc.nc.gov)

Executive Director  
(919) 733-2435

Accounting  
(919) 733-4279

Consumer Services  
(919) 733-9277

Economic Research  
(919) 733-2267

Energy  
(919) 733-2267

Legal  
(919) 733-6110

Transportation  
(919) 733-7766

Water/Telephone  
(919) 733-5610

## CERTIFICATE OF SERVICE

I certify that a copy of this Testimony has been served on all parties of record or their attorneys, or both, in accordance with Commission Rule R1-39, by United States mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 30th day of June, 2023.

Electronically submitted  
/s/Elizabeth D. Culpepper  
Staff Attorney

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

**DOCKET NO. W-354, SUB 412**

In the Matter of	)	<b>JOINT TESTIMONY OF</b>
Application for Approval of Business	)	<b>LYNN FEASEL,</b>
Combination between Carolina Water	)	<b>JUNE CHIU,</b>
Service, Inc. of North Carolina/Corix	)	<b>LINDSAY Q. DARDEN, AND</b>
Infrastructure (US) Inc., and SW	)	<b>JOHN R. HINTON</b>
Merger Acquisition Corp.	)	<b>PUBLIC STAFF –</b>
	)	<b>NORTH CAROLINA</b>
	)	<b>UTILITIES COMMISSION</b>

**June 30, 2023**

1 **Q. Ms. Feasel, please state your name, business address, and**  
2 **present position.**

3 A. My name is Lynn Feasel. My business address is 430 North  
4 Salisbury Street, Raleigh, North Carolina. I am the Financial  
5 Manager of the Water, Sewer, and Telecommunications Sections  
6 with the Accounting Division of the Public Staff – North Carolina  
7 Utilities Commission (Public Staff).

8 **Q. Would you briefly discuss your education and experience?**

9 A. My education and experience are summarized in Appendix A of this  
10 testimony.

11 **Q. Ms. Chiu, please state your name, business address, and**  
12 **present position.**

13 A. My name is June Chiu. My business address is 430 North Salisbury  
14 Street, Raleigh, North Carolina. I am a Public Utilities Regulatory  
15 Analyst with the Accounting Division of the Public Staff.

16 **Q. Would you briefly discuss your education and experience?**

17 A. My education and experience are summarized in Appendix B of this  
18 testimony.

1 **Q. Ms. Darden, please state your name, business address, and**  
2 **present position.**

3 A. My name is Lindsay Q. Darden. My business address is 430 North  
4 Salisbury Street, Raleigh, North Carolina. I am a Public Utilities  
5 Engineer with the Water, Sewer, and Telephone Division of the  
6 Public Staff.

7 **Q. Would you briefly discuss your education and experience?**

8 A. My education and experience are summarized in Appendix C of this  
9 testimony.

10 **Q. Mr. Hinton, please state your name, business address, and**  
11 **present position.**

12 A. My name is John R. Hinton. My business address is 430 North  
13 Salisbury Street, Raleigh, North Carolina. I am the Director of the  
14 Economic Research Division of the Public Staff.

15 **Q. Would you briefly discuss your education and experience?**

16 A. My education and experience are summarized in Appendix D of this  
17 testimony.

18 **Q. Please describe the purpose of your testimony in this**  
19 **proceeding.**

20 A. The purpose of our testimony is to present the results of the Public  
21 Staff's investigation of the application filed on November 23, 2022

1 (Application), by Carolina Water Service, Inc. of North Carolina  
2 (CWSNC), Corix Infrastructure (US) Inc. (Corix US),<sup>1</sup> and SW  
3 Merger Acquisition Corp. (SWMAC)<sup>2</sup> (collectively, the Applicants),  
4 pursuant to N.C. Gen. Stat. § 62-111 and Commission Rule R1-5 for  
5 authorization to engage in a business combination transaction as  
6 described in more detail below (Merger).

7 In our testimony, we describe the scope of the Public Staff's  
8 investigation of the Merger; discuss the balancing of costs and  
9 benefits of the Merger; describe the primary reasons for and major  
10 provisions of the Merger-related regulatory conditions recommended  
11 by the Public Staff, which are attached hereto as Exhibit 1  
12 (Regulatory Conditions); and present the Public Staff's  
13 recommendation regarding Commission approval of the Merger.

14 **Q. Please describe the Public Staff's investigation.**

15 A. A task force of accountants, engineers, attorneys, and financial  
16 analysts conducted an investigation of the Merger. We reviewed the  
17 Application to assess potential costs and benefits of the Merger and  
18 analyzed the complex and multiple levels of business entities in the

---

<sup>1</sup> Corix US is a corporation incorporated under the laws of Delaware. Corix US is owned by Corix Infrastructure Inc. (CII). Corix US indirectly owns 100% of CWSNC.

<sup>2</sup> SWMAC is a Delaware corporation that owns 100% of SouthWest Water Company (SouthWest). SWMAC is owned by IIF Subway Investment LP (IIF Subway) and Bazos CIV, L.P. (Bazos). IIF Subway is indirectly owned by IIF US Holding 2 LP, and Bazos CIV, L.P. is indirectly owned by the German reinsurer, Munich RE (Münchener Rückversicherungs-Gesellschaft Aktiengesellschaft in München).

1 proposed ownership chain above CWSNC. In the course of our  
2 investigation, we submitted data requests to the Applicants and  
3 reviewed the responses to those data requests. The Public Staff also  
4 reviewed the applications for Merger and related data requests and  
5 responses filed in other jurisdictions.

6 **Q. Why is it important to identify and balance the costs and**  
7 **benefits of a proposed merger or business combination?**

8 A. N.C. Gen. Stat. § 62-111(a) provides that no merger or combination  
9 affecting any public utility shall be made through acquisition or  
10 control by stock purchase or otherwise, except after Commission  
11 approval, which “shall be given if justified by the public convenience  
12 and necessity.”

13 As explained in the Order Approving Merger Subject to Regulatory  
14 Conditions and Code of Conduct issued September 29, 2016, in  
15 Docket Nos. E-2, Sub 1095, E-7, Sub 1100, and G-9, Sub 682  
16 (Duke/Piedmont Merger Order):

17 In prior merger proceedings the Commission has  
18 established a three-part test for determining whether a  
19 proposed utility merger is justified by the public  
20 convenience and necessity. That test is (1) whether the  
21 merger would have an adverse impact on the rates and  
22 services provided by the merging utilities; (2) whether  
23 ratepayers would be protected as much as possible  
24 from potential costs and risks of the merger; and (3)  
25 whether the merger would result in sufficient benefits to  
26 offset potential costs and risks. See Order Approving  
27 Merger Subject to Regulatory Conditions and Code of  
28 Conduct (Duke/Progress Merger Order), issued June

1 29, 2012, in Docket Nos. E-2, Sub 998 and E-7, Sub  
2 986, aff'd, In re Duke Energy Corp., 232 N.C. App. 573,  
3 755 S.E.2d 382 (2014). These questions are related to  
4 one another and together establish a reasoned  
5 framework upon which utility mergers may be  
6 evaluated. In making these assessments, the  
7 Commission has also examined factors such as  
8 whether service quality will be maintained or improved,  
9 the extent to which costs can be lowered and rates can  
10 be maintained or reduced, and whether effective  
11 regulation of the merging utilities will be maintained. See  
12 Order Approving Merger and Issuance of Securities,  
13 issued April 22, 1997, in Docket No. E-7, Sub 596.

14 Duke/Piedmont Merger Order, p. 68.

15 **Q. Please describe the Merger.**

16 A. On August 26, 2022, CII and Corix US (the Corix Parties) entered  
17 into a transaction agreement (Transaction Agreement) with IIF  
18 Subway, SWMAC, and SouthWest (the SouthWest Parties). The  
19 Transaction Agreement provides a framework for combining CII's  
20 water, wastewater, and related businesses with the water and  
21 wastewater businesses owned by SWMAC. When the transactions  
22 contemplated by the Transaction Agreement are completed, CII and  
23 an affiliate or affiliates of CII will own 50% of Corix US. SWMAC  
24 Holdco, an entity that will be formed by SWMAC's shareholders  
25 before closing, will own the other 50% of Corix US. Corix US, in turn,  
26 will indirectly own and control all the CII water, wastewater, and  
27 related businesses, and the SWMAC water and wastewater  
28 businesses. To prepare for the Merger, both the Corix Parties and  
29 the SouthWest Parties will undertake pre-closing restructuring



1 transactions, which are described in Appendix A to the Application.  
2 The Transaction Agreement is attached to the Application as  
3 Appendix B.

4 After the Corix Parties and the SouthWest Parties complete the pre-  
5 closing restructuring transactions, SWMAC will merge with and into  
6 Corix US, with Corix US being the surviving entity. As a result of this  
7 step, SWMAC Holdco will acquire 50% of Corix US's stock, Corix US  
8 will acquire the outstanding stock of SouthWest currently owned by  
9 SWMAC, and Corix US will continue to indirectly own CWSNC.

10 Corix US then will transfer all of the outstanding equity of SouthWest  
11 and certain Corix US entities to Intermediate Newco.<sup>3</sup> In exchange  
12 for this contribution of stock, Intermediate Newco will issue stock to  
13 Corix US and assume all of Corix US's third-party debt, with  
14 Intermediate Newco being a wholly owned subsidiary of Corix US.

15 Upon consummation of the Merger: (a) CII and an affiliate or affiliates  
16 of CII will own 50% of Corix US's stock; and (b) SWMAC Holdco will  
17 own the remaining 50% of Corix US's stock. Corix US will own all of  
18 the stock of Intermediate Newco, and Intermediate Newco will  
19 indirectly own all of the utility operating subsidiaries comprising the  
20 CII water, wastewater, and related businesses, as well as the

---

<sup>3</sup> Corix US will transfer all of the stock of Inland Pacific Resources Inc. and Corix Utility Systems (Georgia) Inc. to Intermediate Newco.

1 SWMAC water and wastewater businesses, completing the merger  
2 of equals.

3 **Q. Please explain the primary reasons for, and the major**  
4 **provisions of, the Regulatory Conditions recommended by the**  
5 **Public Staff.**

6 A. As a result of its investigation, the Public Staff developed its  
7 recommended Regulatory Conditions, which it believes are  
8 necessary to ensure that the Merger meets the Commission's three-  
9 part test for determining whether a proposed utility merger is justified  
10 by the public convenience and necessity and serves the public  
11 interest. The following is a description of the major provisions of our  
12 recommended Regulatory Conditions:

### 13 **Applicability of the Regulatory Conditions**

14 The Regulatory Conditions apply jointly and severally to British  
15 Columbia Investment Management Corporation (BCI), CII,<sup>4</sup> Bazos,  
16 IIF Subway, SWMAC Holdco (SWMAC Holdco), Corix US, Intermediate  
17 Newco, and CWSNC (as well as any successor entities).

---

<sup>4</sup> It is anticipated that, as of closing, CII and an affiliate or affiliates of CII will collectively own 50% of Corix US's outstanding stock. These Regulatory Conditions will apply to such affiliate or affiliates of CII.

1           **Definition of Affiliate**

2           The Regulatory Conditions state that “Affiliate” shall mean BCI, CII,  
3           Bazos, IIF Subway, SWMAC Holdco and any business entity of which  
4           ten percent (10%) or more is owned or controlled, directly or  
5           indirectly, by BCI, CII, Bazos, IIF Subway, SWMAC Holdco, including,  
6           but not limited to, CWSNC, Corix US, and Intermediate Newco.

7           **Regulatory Conditions 1-18: Ratepayer Protection from**  
8           **Potential Costs and Risks Associated with the Merger**

9           These Regulatory Conditions are designed to protect CWSNC’s  
10          ratepayers as much as reasonably possible from potential costs and  
11          risks associated with the Merger.

12          Regulatory Conditions 1-4 address removing the impact of any  
13          expenses or capital costs associated with the Merger or transitioning  
14          to the reorganized entity from CWSNC’s rates and charges, including  
15          change-in-control payments made to terminated executives, Merger-  
16          related bonuses, severance payments, regulatory process costs, and  
17          transaction fees (such as investment banker and legal fees for  
18          transaction structuring, financial market analysis, and fairness  
19          opinions based on formal agreements with investment bankers).  
20          These conditions also address protecting CWSNC from non-  
21          consummation of the Merger and the appropriate treatment of cost  
22          savings in future rate proceedings.

1           These recommended Regulatory Conditions are also intended to  
2           support the continued viability of CWSNC and to insulate and protect  
3           CWSNC and its North Carolina ratepayers from financial risks of  
4           Affiliates. They provide for protections regarding dividend  
5           distributions, maintenance of the level of CWSNC's common equity  
6           capital, and notices of certain investments, default, or bankruptcy.

7           Regulatory Conditions 5, 6, 7, and 11 relate to ring fencing. Condition  
8           6 prohibits CWSNC from paying any distribution in excess of 100%  
9           of CWSNC's net income calculated on a two-year rolling average  
10          basis.

11          Condition 7 protects ratepayers in the event of a decrease in  
12          creditworthiness which could cause an increase in the cost rate of  
13          long-term debt. A sustained decrease in Intermediate Newco's  
14          Funds From Operations (FFO) to its Debt ratio<sup>5</sup> below 10.2% would  
15          trigger an investigation to determine whether a replacement cost of  
16          debt should be relied upon to remove any increases in Corix US's or  
17          CWSNC's cost of long-term debt resulting from the Merger.  
18          Condition 7 also requires Corix Regulated Utilities (US) Inc. (CRU  
19          US) or CWSNC to file an economic analysis of the expected benefits  
20          and costs with a competitive public credit rating and debt offering  
21          within twelve months of consummation of the Merger and avail itself

---

<sup>5</sup> FFO to Debt ratio should be calculated in a format followed by S&P Global Ratings Direct as shown in Table 3 on Page 11 of Applicants' witness Lapson's Direct Testimony.

1 to lower cost debt capital with State Revolving Funds administered  
2 through the North Carolina Department of Environmental Quality.  
3 This would help to address the Public Staff's ongoing concern  
4 regarding CWSNC's relatively high cost of debt.

5 Regulatory Condition 11 requires that CWSNC maintain common  
6 equity capital at levels equal to or greater than 45% of total adjusted  
7 capital. A common equity capitalization ratio of 45% for six years  
8 after the consummation of the Merger represents a reasonable  
9 minimal level of equity capitalization given that CSWNC has  
10 historically maintained a 50% common equity ratio. As such, the  
11 Public Staff does not expect the Merger will lead to any undue  
12 financial risk.

13 The legal entities comprising the post-Merger combined company  
14 are not publicly traded and do not make filings with the Securities  
15 and Exchange Commission (SEC). A publicly owned and traded  
16 corporation makes routine annual and quarterly SEC filings that may  
17 describe business operations, a history of events, operational and  
18 financial conditions, and insight into any risk, as well as the  
19 company's management team and legal proceedings. Notification  
20 filings describing unscheduled events such as a bankruptcy, material  
21 impairment, completion of acquisition or disposition of assets,  
22 departures or appointments of executives, and other events of

1 importance may also be filed with the SEC. In order to address risks  
2 and concerns regarding such information not being publicly  
3 available, Regulatory Conditions 8-10 include provisions that provide  
4 for the Commission and the Public Staff to receive the type of  
5 information contained in SEC filings.

6 **Regulatory Conditions 1, 2, and 4: Merger Benefits are Sufficient**  
7 **to Offset any Potential Costs and Risks**

8 These Regulatory Conditions are designed to benefit CWSNC's  
9 ratepayers by ensuring that cost savings associated with the Merger  
10 will be tracked and flowed back to ratepayers. As discussed above,  
11 Regulatory Condition 1 provides that any expenses or capital costs  
12 associated with the Merger or transitioning to the reorganized entity  
13 will be excluded from the regulated expenses of CWSNC for  
14 Commission financial reporting, earnings, and ratemaking purposes.  
15 Regulatory Condition 2 requires CWSNC to report the actual costs to  
16 achieve savings from the Merger, and Regulatory Condition 4  
17 addresses inclusion of Merger cost savings in future rate proceedings.

18 **Regulatory Conditions 12-37: No Adverse Impact on Rates and**  
19 **Services**

20 These Regulatory Conditions are primarily designed to obtain a  
21 commitment from the new ownership that there will be no adverse  
22 impact on the rates and services provided by CWSNC to its North

1 Carolina ratepayers due to the Merger. They provide that after the  
2 close of the Merger, CWSNC shall continue its commitment to  
3 provide safe, reliable, and affordable water and sewer service and  
4 effective customer service support and maintain a level of capital and  
5 operational support in North Carolina necessary to achieve this  
6 commitment. These Regulatory Conditions also require that CWSNC  
7 (1) comply with all regulatory reporting requirements; (2) maintain  
8 sufficient, adequately trained personnel to ensure that regulatory  
9 reporting requirements are complied with in a timely and accurate  
10 manner; (3) make reasonable efforts to retain key staff serving North  
11 Carolina customers; (4) monitor and track customer service by  
12 surveying customers regarding their satisfaction with CWSNC's  
13 public utility service; (5) report annually on efforts to develop and  
14 retain qualified operators and research of the operator labor market;  
15 (6) notify the Public Staff when there is any change in regulatory or  
16 operational personnel at the management/supervisor level; and (7)  
17 develop a low-income customer assistance program.

18 These Regulatory Conditions also govern relationships and  
19 transactions between CWSNC and its Affiliates, including the  
20 allocation of costs, the transfer pricing provisions that govern  
21 affiliated transactions, and the filing of affiliated transaction reports  
22 and agreements with the Commission.

1 **Q. Why does the Public Staff recommend CRU US or CWSNC file**  
2 **an economic analysis of the expected benefits and costs with a**  
3 **competitive public credit rating and debt offering within twelve**  
4 **months of consummation of the Merger?**

5 A. While the Applicants' witness Lapson testified that the Merger will  
6 result in superior access to equity capital funding, she was not as  
7 confident that the Merger will result in greater access to sources of  
8 debt capital. As such, an ongoing concern of the Public Staff has  
9 been CWSNC's relatively high cost of debt. Over numerous years,  
10 including the last five, the Commission has approved a significantly  
11 higher<sup>6</sup> cost rate of long-term debt for CWSNC as compared to Aqua  
12 NC, whose parent company's debt is publicly rated as compared to  
13 CWSNC's private debt placements. Witness Lapson testified that the  
14 Merger may expand the field of interested bond investors to CRU  
15 US; however, the pool of potential investors would be even greater  
16 and would likely result in lower costs of debt through a public credit  
17 rating and public offering. Given the planned external capital  
18 requirements for CWSNC, the Public Staff recommends that twelve  
19 months following the consummation of the Merger CRU US or

---

<sup>6</sup> CWSNC's NCUC currently approved cost of long-term debt is 67 basis points above the approved cost of long-term debt for Aqua North Carolina, Inc. (Aqua NC). In previous rate cases over the last five years, the spread between the approved cost of debt for CWSNC has ranged well over 100 basis points higher than Aqua NC's debt costs for contemporaneous rate cases.



1 CWSNC should file an economic analysis of the expected benefits  
2 and costs with a competitive public debt offering.

3 **Q. What is the Public Staff's recommendation with regard to the**  
4 **proposed Merger?**

5 A. The Public Staff recommends that the proposed Merger be  
6 approved, subject to the provisions of the Regulatory Conditions.

7 **Q. Does this conclude your testimony?**

8 A. Yes.



**QUALIFICATIONS AND EXPERIENCE**

LYNN FEASEL

I am a graduate of Baldwin Wallace University with a Master of Business Administration degree in Accounting. I am a Certified Public Accountant licensed in the State of North Carolina. Prior to joining the Public Staff, I was employed by Franklin International in Columbus, Ohio until June 2013. Additionally, I worked for ABB Inc. from September 2013 until October 2016. I joined the Public Staff as a Staff Accountant in November 2016. Since joining the Public Staff, I have worked on rate cases involving water and sewer and natural gas companies, filed testimony and affidavits in various general rate cases, calculated quarterly earnings for Carolina Water Service, Inc. of North Carolina and Aqua North Carolina, Inc., calculated quarterly earnings for various natural gas companies, calculated refunds to consumers from AH4R and Progress Residential and reviewed franchise and contiguous filings for multiple water and sewer companies.



**QUALIFICATIONS AND EXPERIENCE**

**JUNE CHIU**

I graduated from Drake University with a master's degree in business administration. Prior to joining the Public Staff, I worked for Fortune 500 companies, including Rieter and Novo. My duties varied from preparation of SEC filings to supervision of overall accounting operations, internal controls, and operation of ERP systems.

I joined the Public Staff in October 2017. I am responsible for: (1) examining and analyzing testimony, exhibits, books and records, and other data presented by utilities and other parties under the jurisdiction of the Commission or involved in Commission proceedings; and (2) preparing and presenting testimony, exhibits, and other documents for presentation to the Commission.

I have performed audits and/or presented testimony and exhibits before the Commission for water cases involving Ridgecrest, Water Resources, Aqua North Carolina, Lake Junaluska, Carolina Water Service Inc. of North Carolina, and JAARS. I have participated in electric and gas cases such as the Dominion Energy North Carolina 2019 general rate case, Duke Energy Progress, LLC's general rate cases and 2020 REPS proceeding, Duke Energy Carolinas, LLC's 2021 fuel rider case and 2019 thru 2023 general rate cases. I have also worked on transfer and franchise cases.



**QUALIFICATIONS AND EXPERIENCE**

Lindsay Q. Darden

I graduated from North Carolina State University, earning a Bachelor of Science Degree in Civil Engineering. I am a licensed Professional Engineer (PE - State of North Carolina #042110). I am also certified as a B-Well Operator (#130281) by the North Carolina Water Treatment Facility Operators Certification Board. I worked for the North Carolina Department of Environmental Quality (DEQ), Public Water Supply Section for four years prior to joining the Public Staff in December 2016. Prior to working for DEQ, I worked for Smith Gardner, an engineering consulting firm.

My duties with the Public Staff are to monitor the operations of regulated water and wastewater utilities with regard to rates and service. These duties include conducting field investigations, reviewing, evaluating, and recommending changes in the design, construction, and operations of regulated water and wastewater utilities, presenting expert testimony in formal hearings, and presenting information, data, and recommendations to the North Carolina Utilities Commission.





**QUALIFICATIONS AND EXPERIENCE**

JOHN R. HINTON

I received a Bachelor of Science degree in Economics from the University of North Carolina at Wilmington in 1980 and a Master of Economics degree from North Carolina State University in 1983. I joined the Public Staff in May of 1985. I filed testimony on the long-range electrical forecast in Docket No. E-100, Sub 50. In 1986, 1989, and 1992, I developed the long-range forecasts of peak demand for electricity in North Carolina. I filed testimony on electricity weather normalization in Docket Nos. E-7, Sub 620, E-2, Sub 833, and E-7, Sub 989. I filed testimony the level of funding for nuclear decommissioning costs in Docket Nos. E-2, Sub 1023; E-7, Sub 1026, and E-7, Sub 1146. I have filed testimony on the Integrated Resource Plans (IRPs) filed in Docket No. E-100, Subs 114 and 125, and I have reviewed numerous peak demand and energy sales forecasts and the resource expansion plans filed in electric utilities' annual IRPs and IRP updates.

I have been the lead analyst for the Public Staff in numerous avoided cost proceedings, filing testimony in Docket No. E-100, Subs 106, 136, 140, 148, and 158. I filed a Statement of Position in the arbitration case involving EPCOR and Progress Energy Carolinas in Docket No. E-2, Sub 966. I have filed testimony regarding avoided costs related to the cost recovery of energy efficiency programs and demand side management programs in Dockets Nos. E-7, Sub 1032, E-7, Sub 1130, E-2, Sub 1145, and E-2, Sub 1174.

I have filed testimony on the issuance of certificates of public convenience and necessity (CPCN) in Docket Nos. E-2, Sub 669, SP-132, Sub 0, E-7, Sub 790, E-7, Sub 791, and E-7, Sub 1134.

I filed testimony on the merger of Dominion Energy, Inc. and SCANA Corp. in Docket Nos. E-22, Sub 551, and G-5, Sub 585. I testified in the application to transfer the CPCN from North Topsail Water and Sewer, Inc. to Utilities Inc., in Docket No. W-1000, Sub 5. I testified in the sale of Frontier Natural Gas Company in Docket No. G-40, Sub 160. I testified in the transfer of the Bald Head Island Transportation, LLC in Docket No. A-41, Sub 22.

I have filed testimony on the issue of fair rate of return in Docket Nos. E-22, Subs 333, 412, and 532; P-26, Sub 93; P-12, Sub 89; G-21, Sub 293; P-31, Sub 125; P-100, Sub 133b; P-100, Sub 133d (1997 and 2002); G-21, Sub 442; G-5, Subs 327, 386; and 632; G-9, Subs 351, 382, 722 and Sub 781, G-39, Sub 47, W-778, Sub 31; W-218, Subs 319, 497, 526 and 573; W-354, Subs 360; 364, 384, and 400 and in several smaller water utility rate cases. I have filed testimony on credit metrics and the risk of a downgrade in Docket No. E-7, Sub 1146.

I have filed testimony on the hedging of natural gas prices in Docket No. E-2, Subs 1001, 1018, and 1292. I have filed testimony on the expansion of natural gas in Docket No. G-5, Subs 337 and 372. I performed the financial analysis in the two audit reports on Mid-South Water Systems, Inc., Docket No. W-100, Sub 21. I have filed testimony on rainfall normalization with respect of water sales in Docket No. W-274, Sub 160.

I was a member of the Small Systems Working Group that reported to the National Drinking Water Advisory Council with the EPA and I have published an article in the National Regulatory Research Institute's Quarterly Bulletin entitled Evaluating Water Utility Financial Capacity.



## DOCKET NO. W-354, SUB 412 REGULATORY CONDITIONS

These Regulatory Conditions shall apply jointly and severally to British Columbia Investment Management Corporation (BCI), Corix Infrastructure Inc. (CII),<sup>1</sup> Bazos CIV, L.P. (Bazos), IIF Subway Investment LP (IIF Subway), SWMAC Holdco (SWMAC), Corix Infrastructure (US) Inc. (Corix US), Intermediate Newco, and Carolina Water Service, Inc. of North Carolina (CWSNC) (as well as any successor entities), 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 (Merger). These Regulatory Conditions, which become effective only upon closing of the Merger, shall be interpreted in the manner that ensures CWSNC's customers (a) are protected from any known adverse effects from the Merger, (b) are protected as much as possible from potential costs and risks resulting from the Merger, and (c) receive sufficient known and expected benefits to offset any potential costs and risks resulting from the Merger.

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 BCI, CII, Bazos, IIF Subway, SWMAC and any business entity of which ten percent (10%) or more is owned or controlled, directly or indirectly, by BCI, CII, Bazos, IIF Subway, SWMAC, including, but not limited to, CWSNC, Corix US, and Intermediate Newco.

- 1. Merger-related Expenses and Capital Costs.** Any expenses or capital costs associated with the Merger or transitioning to the reorganized entity will be excluded from the regulated expenses of CWSNC for Commission financial reporting and ratemaking purposes. Merger expenses and capital costs include, but are not limited to, change-in-control payments made to terminated executives, Merger-related bonuses, severance payments, regulatory process costs, and transaction fees (such as investment banker and legal fees for transaction structuring, financial market analysis, and fairness opinions based on formal agreements with investment bankers). Any premium paid related to the Merger will not be "pushed down" to CWSNC and will not be recovered from CWSNC's ratepayers. The Merger 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-

<sup>1</sup> It is anticipated that, as of closing, CII and an affiliate or affiliates of CII will collectively own 50% of Corix US's outstanding stock. These Regulatory Conditions will apply to such affiliate or affiliates of CII.

- offs, or restatements on CWSNC's books and records will be excluded for ratemaking purposes. CWSNC will file a summary report of its final accounting for Merger-related expenses and capital costs within 120 days after the close of the Merger, and supplemental reports within 60 days after each quarter until such expenses and capital costs cease to be incurred.
2. **Costs to Achieve Merger Savings.** CWSNC shall report the actual costs to achieve savings from the Merger, if any, on its Quarterly Earnings Reports<sup>2</sup> in accordance with generally accepted accounting principles and identify the North Carolina portions of these costs beginning with the first quarter after the Merger closes.
  3. **Non-Consummation of Merger.** If the Merger 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 merger.
  4. **Inclusion of Cost Savings in Future Rate Proceedings.** For 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 Merger cost savings in setting just and reasonable rates for CWSNC. For six years after the closing date, CWSNC will track and quantify all the benefits (both qualitative and quantitative) customers in its service territory are receiving under its new ownership and report on a quarterly basis in conjunction with its Quarterly Earnings Reports. Additionally, CWSNC will include the information in any future base rate case in which such tracked benefits accrue in the test/rate years applicable to the particular rate filing(s).
  5. **Hold Harmless Commitment.** The Merger 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, BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, Intermediate Newco, and CWSNC (as well as any successor entities exercising control over or allocating costs to CWSNC) shall take all such actions as may be reasonably necessary and appropriate to hold CWSNC's customers harmless from the effects of the Merger.
  6. **Distributions to BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, Intermediate Newco, and Corix Regulated Utilities (US) Inc. (CRU US).** CWSNC shall not pay to BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, Intermediate Newco, or CRU US any distribution exceeding 100% of CWSNC's net income calculated on

<sup>2</sup> Quarterly Earnings reports are filed with the Commission in accordance with Commission Rules R1-17A(j)(1), R7-39, and R10-26.

a two-year rolling average basis. In addition, CWSNC shall limit cumulative distributions paid to BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, Intermediate Newco, or CRU US subsequent to closure of the Merger to (i) the amount of its retained earnings on the day prior to the closure of the Merger, plus (ii) any future earnings recorded by CWSNC subsequent to closure of the Merger. CWSNC shall not make any distributions to any Affiliates other than BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, Intermediate Newco, or CRU US unless approved by the Commission. 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 in Creditworthiness.** To the extent the cost rates of any of Corix US's or CWSNC's long-term debt increase as a result of the Merger, a replacement debt cost rate or an adjustment to the embedded cost of debt should be determined. The decrease in creditworthiness would be indicated by a deterioration of the financial condition of Intermediate Newco, including a sustained decrease in the Funds From Operations (FFO) to Debt ratio.<sup>3</sup> This replacement cost rate shall be applicable to all financings, refundings, and refinancings taking place following the change in creditworthiness as well as other proceedings impacted by the cost of debt. In particular, if a decrease in creditworthiness has occurred and has contributed to an increase in the cost of debt, a replacement cost calculation will be determined, as part of CWSNC's future general rate cases. This requirement will continue for six years after the consummation of the Merger. Twelve months following the consummation of the Merger, CRU US or CWSNC shall file an economic analysis of the expected benefits and costs with a competitive public credit rating and debt offering. In addition, CWSNC shall avail itself to lower cost debt capital with State Revolving Funds administered through the North Carolina Department of Environmental Quality.
8. **Notice of Certain Investments.** Whenever BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, or Intermediate Newco makes any new or increased direct or indirect investment in a business entity where such investment appears or will appear on the books of BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, or Intermediate Newco and the amount of such investment is equal to 10% or more of the book capitalization of BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, or Intermediate Newco, the investing entity shall file or cause to be filed, as soon as practicable following Board or other approval of the subject transaction and any public announcement thereof (if one is made), a notice of the investment with the Commission. The notice shall include a full description of the investment and an explanation of how it will be accounted for in the investing entity's books and records.

<sup>3</sup> Table 3 on Page 11 of witness Lapson's direct testimony indicates that the FFO to Debt ratio for Intermediate Newco as of December 31, 2021, was 10.2%.

9. **Notice of Certain BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, and Intermediate Newco Investments.** CWSNC shall file a notice with the Commission, subsequent to approval by the Board of CII, Bazos, IIF Subway, SWMAC, Corix US, or Intermediate Newco and as soon as practicable following any public announcement (if one is made), of any new investment in a regulated utility by BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, Intermediate Newco or any Affiliate.
10. **Notice by CWSNC of Default or Bankruptcy of Affiliate.** If BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, Intermediate Newco or an Affiliate of CWSNC experiences a default on an obligation that is material to BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, or Intermediate Newco or files for bankruptcy, and such bankruptcy is material to BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, or Intermediate Newco, CWSNC shall notify the Commission of the event in advance, if possible, or, if not, as soon as possible but not later than ten days after such event. For purposes of this section, materiality shall be any default or bankruptcy that would be required to be disclosed in the audited financial statements of BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, or Intermediate Newco.
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-Merger closing balance sheets and the closing journal entries, including relevant descriptions and disclosures for the transactions recorded, for BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, Intermediate Newco, and itself, as soon as practicable but not later than the end of the second full quarter following the close of the Merger.
13. **Meetings with Public Staff.** CWSNC and any Affiliates requested by the Public Staff 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 Board of Directors or Management.** CWSNC shall notify the Commission within ten days of any changes to the Board of Directors or management of BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, Intermediate Newco, or CWSNC.
16. **Notice and Consultation with Public Staff Regarding Proposed Structural and Organizational Changes.** Upon request, or at least 60 days before such changes are to become effective, BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, Intermediate Newco, and CWSNC shall notify, meet and consult with, and provide requested relevant data to, the Public Staff regarding plans for significant changes in CWSNC's or any of its Affiliates' organization, structure, and activities which are reasonably anticipated to affect CWSNC; the expected or potential impact of such changes on CWSNC's rates, operations and service; and proposals for assuring that such plans do not adversely affect CWSNC's customers.
17. **Mergers and Acquisitions.** For any proposed merger or other business combination<sup>4</sup> that would affect CWSNC, CWSNC shall file an application for approval pursuant to N.C.G.S. § 62-111(a) at least 180 days before the proposed closing date for such merger or other business combination.
18. **Financial Statements.** By the end of the first quarter of each calendar year, CWSNC will provide to the Public Staff audited financial statements of Corix US, Intermediate Newco, and CWSNC for the preceding calendar year.
19. **Obligations with Affiliates.** CWSNC will not make a loan to any Affiliate, issue a guarantee for an obligation of any Affiliate, or otherwise assume any obligation of any Affiliate without prior Commission approval.
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. CWSNC shall provide to the Public Staff, on a confidential basis and for informational purposes, its six-year projected capital budget for new, expanded, or upgraded water and sewer facilities in North Carolina by March 31 of every year until relieved of this requirement by future Commission order.
21. **Regulatory Reporting Requirements.** CWSNC shall comply with all regulatory reporting requirements.
22. **Regulatory Staffing.** CWSNC shall maintain sufficient, adequately trained personnel to ensure that regulatory requirements are complied with in a timely and accurate manner. CWSNC shall notify the Public Staff when there is any change

<sup>4</sup> For purposes of these Regulatory Conditions, a "merger or other business combination" is defined as not simply an investment in a business entity, but as a transaction or other event in which either (1) an acquirer obtains control of one or more business entities, or (2) two or more previously separate business entities merge into one with newly defined or established control authority.

- in regulatory or operational personnel at the management/supervisor level. Each year by June 30, 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 and shall incorporate this information into its processes, programs, and services. The survey should include specific questions that capture any changes in utility service and customer service post-merger. The survey results shall be filed with the Commission. Surveys shall be conducted annually for six years after the consummation of the Merger and continue until relieved of this requirement by future Commission order.
  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.** Within 90 days of Commission approval of these Regulatory Conditions, CWSNC shall provide a list of items determined to be the shared goods and services of CWSNC and all other Affiliates, and the basis for each determination.
  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. CWSNC shall not commit to any cost allocation that would result from any changes to such CAM or list of goods and services until ten days after it has filed such changes with the Commission. The CAM shall be updated annually, and the revised CAM shall be filed with the Commission no later than March 31 of the year that the CAM is to be in effect. The CAM shall also be updated whenever the structure of the BCI, CII, Bazos, IIF Subway, SWMAC, Corix US, and Intermediate Newco corporate entities or the relationships between Affiliates are changed.
  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 BCI, CII, Bazos, IIF Subway, and SWMAC 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 through BCI, CII, Bazos, IIF Subway, SWMAC, or a direct or indirect subsidiary of BCI, CII, Bazos, IIF Subway, or SWMAC, 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, except that CWSNC shall not take any service from an Affiliate under circumstances where the costs incurred for that service (whether directly or through allocation) exceed fair market value. Services provided by a service company to CWSNC shall be provided at cost, except that CWSNC shall not pay any amount for a service that exceeds the fair market value of that service.

29. **Transfer of Services, Functions, Employees, or Assets.** CWSNC shall file notice with the Commission 60 days prior to the initial transfer of any services, functions, employees, 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 an effect on CWSNC's ratepayers.
30. **Affiliated 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 changes to existing agreements, CWSNC shall file such changes with the Commission.
31. **Affiliate Transactions 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 March 31, 2024, for activity through December 31, 2023, and annually thereafter on March 31 for the activity from January 1 through December 31 of the preceding year.
32. **Service Area Reporting.** CWSNC shall file an annual report on March 31 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.
33. **Geographic Information Systems (GIS) Mapping.** CWSNC shall grant the Public Staff and Commission view and download access of CWSNC's GIS interactive map of North Carolina service areas.
34. **Emergency Operator Systems.** 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 three years after the consummation of the

Merger and continue until relieved of this requirement by future Commission order.

35. **Customer Assistance Program (CAP).** CWSNC and its Affiliates, at their own cost, shall develop a low-income customer assistance program and file it in a separate docket within one year of consummation of the Merger. 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 Affiliate(s); and (5) description of how the program will be administered. If the CAP is approved by the Commission, CWSNC and its Affiliates shall make an annual goodwill contribution to fund the CAP pilot program until the effective date of rates in CWSNC's next general rate case or otherwise ordered by the Commission.
36. **Leadership Retention.** For three years after the consummation of the Merger, CWSNC and any Affiliate(s) shall make reasonable efforts to retain key staff serving North Carolina customers, including but not limited to, Donald H. Denton III (Senior Vice President, East Operations for CII) and Anthony Konsul (Director, State Operations). CWSNC shall notify the Commission at least 60 days prior to the separation of any key staff serving North Carolina customers.
37. **Operator Development and Retention.** CWSNC and its Affiliates shall report annually on their efforts to develop and retain qualified operators and research of the operator labor market until relieved of this requirement by future Commission order.