



**NORTH CAROLINA  
PUBLIC STAFF  
UTILITIES COMMISSION**

July 31, 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 settlement testimony of Lynn Feasel, Public Utility Regulatory Analyst Supervisor, 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  
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/s/ James Bernier, Jr.  
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## 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 31<sup>st</sup> day of July, 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	)	
Application for Approval of Business	)	<b>JOINT SETTLEMENT</b>
Combination between Carolina Water	)	<b>TESTIMONY OF</b>
Service, Inc. of North Carolina/Corix	)	<b>LYNN FEASEL,</b>
Infrastructure (US) Inc., and SW	)	<b>LINDSAY Q. DARDEN, AND</b>
Merger Acquisition Corp.	)	<b>JOHN R. HINTON</b>
	)	<b>PUBLIC STAFF –</b>
	)	<b>NORTH CAROLINA</b>
	)	<b>UTILITIES COMMISSION</b>

**JULY 31, 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 Public Utility  
5 Regulatory Analyst Supervisor of the Water, Sewer, and  
6 Telecommunications Sections with the Accounting Division of the  
7 Public Staff – North Carolina Utilities Commission (Public Staff).

8 **Q. Are you the same Lynn Feasel who filed direct testimony on**  
9 **behalf of the Public Staff in this proceeding on June 30, 2023?**

10 A. Yes.

11 **Q. Are your qualifications and duties the same as stated in your**  
12 **direct testimony?**

13 A. Yes.

14 **Q. Ms. Darden, please state your name, business address, and**  
15 **present position.**

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

1 **Q. Are you the same Lindsay Q. Darden who filed direct testimony**  
2 **on behalf of the Public Staff in this proceeding on June 30,**  
3 **2023?**

4 A. Yes.

5 **Q. Are your qualifications and duties the same as stated in your**  
6 **direct testimony?**

7 A. Yes.

8 **Q. Mr. Hinton, please state your name, business address, and**  
9 **present position.**

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

13 **Q. Are you the same John R. Hinton who filed direct testimony on**  
14 **behalf of the Public Staff in this proceeding on June 30, 2023?**

15 A. Yes.

16 **Q. Are your qualifications and duties the same as stated in your**  
17 **direct testimony?**

18 A. Yes.

1 **Q. What is the purpose of your settlement testimony in this**  
2 **proceeding?**

3 A. The purpose of our settlement testimony is to support the Joint  
4 Settlement Agreement and Stipulation (Stipulation) filed on  
5 July 31, 2023, entered into between Carolina Water Service, Inc. of  
6 North Carolina (CWSNC), Corix Infrastructure (US) Inc. (Corix US),  
7 and SW Merger Acquisition Corp. (collectively, the Joint Applicants)  
8 and the Public Staff (collectively, the Stipulating Parties) regarding  
9 the proposed business combination transaction (Merger or Proposed  
10 Transaction).

11 **Q. Please briefly describe the Stipulation.**

12 A. The Stipulation addresses the agreement of the Stipulating Parties  
13 that the Commission should authorize the Joint Applicants to  
14 consummate the Proposed Transaction subject to the regulatory  
15 conditions attached to the Stipulation as Appendix A (Regulatory  
16 Conditions).

1 **Q. Do the Regulatory Conditions ensure that the Merger meets the**  
2 **Commission's three-part test for determining whether a**  
3 **proposed utility merger is justified by the public convenience**  
4 **and necessity and serves the public interest discussed in the**  
5 **Public Staff's prefiled direct testimony?**

6 A. Yes. The Regulatory Conditions ensure that CWSNC's customers  
7 (a) are protected from any known adverse effects from the Merger,  
8 (b) are protected as much as possible from potential costs and risks  
9 resulting from the Merger, and (c) receive sufficient known and  
10 expected benefits to offset any potential costs and risks resulting  
11 from the Merger. The Regulatory Conditions also ensure that service  
12 quality and effective regulation of the merging utility will be maintained.

13 **Q. Please explain the primary reasons for, and the major**  
14 **provisions of, the Regulatory Conditions recommended by the**  
15 **Public Staff.**

16 A. The Stipulating Parties agreed to Regulatory Conditions that the  
17 Public Staff believes are necessary to ensure that the Merger meets  
18 the Commission's three-part test for determining whether a proposed  
19 utility merger is justified by the public convenience and necessity and  
20 serves the public interest. The following is a description of the major  
21 provisions of the Regulatory Conditions:



1           **Applicability of the Regulatory Conditions**

2           The Regulatory Conditions set forth commitments made by Corix US,  
3           Intermediate Newco,<sup>1</sup> and CWSNC (Regulatory Condition Parties),  
4           as these are the entities that can or will be directly involved in key  
5           decisions that impact the customers of the operating utilities,  
6           including CWSNC.

7           **Commitment of the Parent Entities**

8           The Regulatory Conditions set forth the commitments of British  
9           Columbia Investment Management Corporation (BCI), Corix  
10          Infrastructure Inc. (CII) and any affiliate of CII that, collectively with CII,  
11          owns 50% of Corix US upon the closing of the Proposed Transaction,  
12          Bazos CIV, L.P. (Bazos), IIF Subway Investment LP (IIF Subway), and  
13          SWMAC Holdco,<sup>2</sup> as well as any additional or successor entities with  
14          control over Corix US, Intermediate Newco or CWSNC (collectively,  
15          the Parent Entities). The Parent Entities acknowledge and consent to  
16          these Regulatory Conditions agreed and entered into by the  
17          Regulatory Condition Parties. The Parent Entities further commit not to  
18          cause the Regulatory Conditions Parties to violate such Regulatory

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<sup>1</sup> Intermediate Newco is an entity that has 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 only upon the closing of the Proposed Transaction.

<sup>2</sup> SWMAC Holdco is an entity that has not been formed but will be formed prior to the closing of the Proposed Transaction. The provisions of the Regulatory Conditions that apply to the Parent Entities shall apply to SWMAC Holdco upon closing the Proposed Transaction.

1 Conditions and not to prevent the Regulatory Condition Parties from  
2 taking commercially reasonable actions to comply with the Regulatory  
3 Conditions, for so long as such Regulatory Conditions remain in effect  
4 and applicable to the Regulatory Condition Parties.

5 **Definition of Affiliate**

6 The Regulatory Conditions state that “Affiliate” shall mean Corix US  
7 and any business entity of which ten percent (10%) or more of the  
8 voting securities or interests are owned, directly or indirectly, by Corix  
9 US, including but not limited to CWSNC and Intermediate Newco.

10 **Regulatory Conditions 1-11: Ratepayer Protection from**  
11 **Potential Costs and Risks Associated with the Merger**

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

15 Regulatory Conditions 1-4 address removing the impact of any  
16 expenses or capital costs associated with the Merger from CWSNC’s  
17 rates and charges, including change-in-control payments made to  
18 terminated executives, Merger-related bonuses, incentive payments,  
19 retention payments, severance payments, regulatory process costs,  
20 and the costs of securing formal written evaluations of the  
21 transaction; the costs of structuring the transaction and obtaining tax  
22 advice on the structure of the transaction; the costs of negotiating,

1 preparing, and reviewing the Transaction Agreement; the costs of  
2 retained consultants and advisors to evaluate the transaction and  
3 perform due diligence; legal and other fees of completing pre-closing  
4 restructuring; legal and other fees to close the Proposed  
5 Transaction; financial advisor fees; and the costs of securing  
6 regulatory approvals. These conditions also address protecting  
7 CWSNC from non-consummation of the Merger and the appropriate  
8 treatment of cost savings in future rate proceedings.

9 These recommended Regulatory Conditions are also intended to  
10 support the continued viability of CWSNC and to insulate and protect  
11 CWSNC and its North Carolina ratepayers from financial risks of  
12 Affiliates. They provide for protections regarding dividend  
13 distributions, maintenance of the level of CWSNC's common equity  
14 capital, and notices of certain investments, default, or bankruptcy.

15 Regulatory Conditions 5, 6, 7, and 11 relate to ring fencing. Condition  
16 6 prohibits CWSNC from paying any distribution in excess of 100%  
17 of CWSNC's net income.

18 Condition 7 ensures there is an investment grade profile which will  
19 protect ratepayers in several ways, including against a decrease in  
20 creditworthiness which could cause an increase in the cost rate of  
21 long-term debt. More specifically, Condition 7 requires an investment  
22 grade profile; discusses metrics that will be considered in assessing

1 same; requires the use of third-party consultants to evaluate the  
2 investment grade profile; mandates a meeting with the Public Staff  
3 regarding the financing of utility operations; provides for a  
4 comparison between private placement debt versus publicly traded  
5 debt instruments; requires an evaluation of whether there are  
6 opportunities for SRF funds; and ensures the Public Staff is not  
7 precluded from subsequently arguing the Merger has caused an  
8 inappropriate cost rate of debt.

9 Regulatory Condition 11 requires that CWSNC maintain common  
10 equity capital at levels equal to or greater than 45% of total adjusted  
11 capital. A common equity capitalization ratio of 45% until the final  
12 order is issued in CWSNC's next general rate case.

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 will be excluded from the revenue  
13 requirement of CWSNC for Commission financial reporting and  
14 ratemaking purposes. Regulatory Condition 2 requires CWSNC to  
15 report the North Carolina portion of actual costs to achieve Merger  
16 savings and Merger benefits, and Regulatory Condition 4 addresses  
17 inclusion of cost savings in future rate proceedings.

18 **Regulatory Conditions 12-36: 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) notify the Commission before, and in no event more than  
11 10 days after, a change to any officer of CWSNC, Intermediate  
12 Newco, or Corix US occurs; (4) informally survey customers  
13 regarding their satisfaction with CWSNC's public utility service; (5)  
14 report annually on efforts to develop and retain qualified operators; ;  
15 (6) upon request, provide the Public Staff and the Commission with  
16 a confidential downloaded version of CWSNC's GIS map of  
17 specifically requested North Carolina service areas, provide the  
18 Public Staff with a direct staff contact as a resource for service area  
19 related inquires and mapping, and collaborate with the Public Staff  
20 to develop a process of sharing GIS data; and (7) develop a low-  
21 income customer assistance program.

22 These Regulatory Conditions also govern relationships and  
23 transactions between CWSNC and its Affiliates, including the

1 allocation of costs, the transfer pricing provisions that govern  
2 affiliated transactions, and the filing of affiliated transaction reports  
3 and agreements with the Commission.

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

6 A. The Public Staff recommends that the Commission approve the  
7 terms of the Stipulation reached by the Stipulating Parties, and that  
8 the Merger be approved, subject to the provisions of the Regulatory  
9 Conditions.

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

11 A. Yes.