

**THE PROVINCE OF BRITISH COLUMBIA
BRITISH COLUMBIA UTILITIES COMMISSION**

In the Matter of an Application
for Approvals relating to Restructuring
and Business Combination Transactions
Involving
Corix Multi-Utility Services Inc.

November 16, 2022

This Application is for the following orders of the British Columbia Utilities Commission (“**BCUC**”):

- (a) pursuant to section 52 of the *Utilities Commission Act* (“**UCA**”), an order approving Corix Multi-Utility Services Inc. (“**CMUS**”)¹, a public utility under the UCA that is indirectly controlled by British Columbia Investment Management Corporation (“**BCI**”), to transfer its interest in each of the three Stream B thermal energy utilities that it owns and operates (the “**Transferred TES**”) to three limited partnerships to be formed under the laws of a Canadian jurisdiction (the “**TES LPs**”), which will continue to be indirectly controlled by BCI;²
- (b) subject to the BCUC’s approval requested above in (a) and pursuant to sections 45 and 46 of the UCA, an order granting a certificate of public convenience and necessity (“**CPCN**”) to each of the TES LPs to enable them to lawfully operate the respective Transferred TES;
- (c) pursuant to section 50 of the UCA, an order approving CMUS to issue additional shares and to assume intercompany balances in connection with the restructuring of Corix Infrastructure Inc. (“**CII**”) and its subsidiaries; and
- (d) pursuant to section 54 of the UCA, an order approving a holding entity which is anticipated to be a limited partnership to be formed under the laws of Delaware or another U.S. state (“**SMWAC Holdco**”) to acquire 50% ownership of Corix Infrastructure (US) Inc. (“**Corix US**”), which will result in SWMAC Holdco sharing indirect control of CMUS with CII and possibly an affiliate or affiliates of CII.

The following Appendices are included in support of this Application:

- (a) Appendix A – Simplified Pre- and Post-closing Organizational Charts; and
- (b) Appendix B – Draft Order.

I. INTRODUCTION

1. CMUS owns and operates a number of public utility systems in British Columbia that are subject to the jurisdiction of the BCUC pursuant to the UCA and the BCUC’s Thermal Energy System (“**TES**”) Regulatory Framework Guidelines.

¹ CMUS will be converted to an unlimited liability corporation (ULC) by a step in the restructuring of Corix Infrastructure Inc. and its subsidiaries. The restructuring of Corix Infrastructure Inc. and its subsidiaries is discussed later in this Application.

² Each TES LP will own and operate one of the three Transferred TES.

2. CMUS' energy utilities vary in size and complexity, from energy distribution systems that are part of multi-utility systems serving small residential, commercial, or recreational developments (the "**Multi-Utility Systems**") to Stream B TES serving campus developments. CMUS owns and operates the following BCUC-regulated utility systems:

- a) 3 Stream B TES;
- b) 2 Stream A geothermal energy utilities;
- c) 1 Micro TES geothermal energy utility;
- d) 2 electricity distribution utilities;
- e) 2 natural gas distribution utilities; and
- f) 1 propane distribution utility.

3. CMUS is a wholly-owned subsidiary of Corix Utilities Inc. ("**CUI**"), which is a wholly-owned subsidiary of CII, and is indirectly controlled by BCI.³ Pursuant to BCUC Orders G-52-06 and G-92-12, the BCUC approved a numbered BC company and affiliates of BCI to acquire ownership of shares in CII causing BCI to indirectly control CMUS.⁴

4. On August 26, 2022, CII and Corix US (the "**Corix Parties**") entered into a transaction agreement (the "**Transaction Agreement**") with IIF Subway Investment LP ("**IIF Subway**"), SW Merger Acquisition Corp. ("**SWMAC**") and SouthWest Water Company ("**SouthWest**", and together with IIF Subway and SWMAC, the "**SouthWest Parties**"). The Transaction Agreement provides a framework for combining CII's water utility and wastewater and related businesses⁵ in Canada and the United States with the water utility and wastewater businesses of SouthWest in the United States (the "**Business Combination**"). The Business Combination will result in a combined company holding the aforementioned businesses through an organizational structure shown in Appendix A.

³ Founded in 1999, BCI is a statutory corporation created by the Public Sector Pension Plans Act for the purpose of providing investment management services to British Columbia's public sector. BCI manages approximately \$211 billion (CAD) of assets on behalf of its clients, which include 11 public sector pension plans, three insurance funds and various special purpose funds. Through its infrastructure and renewable resources program, BCI seeks long-term, stable investments around the world in regulated utilities, transportation, telecommunications, and other infrastructure-based industries.

⁴ The numbered BC company acquired shares of Terasen Utility Services Inc. in 2006, which resulted in acquisition of indirect control of Terasen Multi-Utility Services Inc. Terasen Multi-Utility Services Inc. was subsequently changed to Corix Multi-Utility Services Inc. BCI affiliates acquired additional shares of Corix Infrastructure Inc. in 2012.

⁵ CII's related businesses include the electric, natural gas, and propane distribution, geothermal energy delivery and municipal service operations of CII related to its U.S. and Canadian water and wastewater operations. This Application refers to these CII business activities as the related businesses.

5. CMUS and its related businesses will become part of the organizational structure of the combined company, being Corix US, following the Business Combination. However, the Business Combination does not include the Transferred TES.⁶ Therefore, as a part of the pre-closing restructuring, the Transferred TES will be moved out of CMUS and into separate entities (being the TES LPs), which will continue to be indirectly controlled by BCI.

6. Upon the completion of the Business Combination, there will be two distinct organizations. This is illustrated in Appendix A.

a) The businesses that are included in the Business Combination will be held by a combined company, being Corix US, through an organizational structure that is jointly owned by SWMAC Holdco with CII and possibly an affiliate or affiliates of CII.

b) The Transferred TES will be held by the TES LPs that currently are and will continue to be indirectly controlled by BCI and are outside of the combined company's organizational structure.

7. CII therefore proposes to undertake or cause its subsidiaries to undertake a restructuring prior to the completion of the Business Combination. The main purpose of the pre-closing restructuring as it relates to this Application is to transfer CMUS' ownership of the Transferred TES to the TES LPs, which will continue to be indirectly controlled by BCI after the transfer. The pre-closing restructuring also contemplates the issuance of new shares by CMUS and the winding-up of an entity into CMUS, which will ultimately result in certain intercompany balances owed by CMUS being extinguished and require CMUS to assume intercompany balances for a brief moment in time (collectively, the "**Intercompany Balances Settlement Steps**").

8. BCI will retain indirect control over the Transferred TES throughout and following the Business Combination. Accordingly, the transfer of the Transferred TES to the TES LPs will not result in any change in control nor is any person acquiring a "reviewable interest" in the Transferred TES.⁷ Moving the Transferred TES into the TES LPs will provide for greater efficiency in managing the business, greater transparency, containment of liability as between the TES systems, and allow for greater flexibility in the future.

⁶ BCI will retain indirect control of the Transferred TES following the completion of the Business Combination. The Multi-Utility Systems are included in the Business Combination due to a level of connectedness between them and their common pool of customers to the water utilities servicing the same or nearby locations. For example, customers of the water utility and wastewater operations at Sun Rivers are generally also customers of the Sun Rivers natural gas and electricity distribution utilities.

⁷ Section 54 of the *UCA* does not apply to the acquisition by the TES LPs of the Transferred TES.

9. The Transferred TES in respect of which BCUC approvals pursuant to sections 45, 46, and 52 of the UCA are requested in this Application are:

- a) Burnaby Mountain District Energy Utility;
- b) UBC Neighbourhood District Energy System; and
- c) Dockside Green District Energy Utility.

10. Although CMUS will transfer its interests in the Transferred TES to the TES LPs, CMUS will retain ownership and operations of the Multi-Utility Systems because they form part of CII's related businesses, which are included in the Business Combination. The Multi-Utility Systems in respect of which BCUC approval pursuant to section 54 of the UCA is requested in this Application are:

- a) Panorama Mountain:
 - (i) Propane Distribution Utility;
- b) Sonoma Pines:
 - (i) Electricity Distribution Utility;
 - (ii) Natural Gas Distribution Utility;
- c) Sun Rivers:
 - (i) Electricity Distribution Utility;
 - (ii) Natural Gas Distribution Utility;
 - (iii) Micro TES Geothermal System;
 - (iv) Stream A Belmonte Central Energy Plant TES; and
 - (v) Stream A Talasa Central Energy Plant TES.

11. Once the pre-closing restructuring is complete, CII will combine its water utility and wastewater and related businesses with SouthWest's water utility and wastewater businesses. This combination will occur at the Corix US corporate level. CII and possibly an affiliate or affiliates of CII will have 50% ownership of Corix US, while SWMAC Holdco will acquire the remaining 50% ownership of Corix US and thereby indirectly control more than 20% of the voting shares of CMUS.

12. A draft order is provided in Appendix B to this Application for the BCUC's consideration.

II. BACKGROUND

Future Formation of Entities

13. SWMAC Holdco and the TES LPs have not been formed at the time of filing this Application. The Business Combination contemplates the formation of several entities that are not yet in existence in order to complete the Business Combination. The purpose of these to-be-formed entities is to facilitate the Business Combination.

14. It is contemplated that SWMAC Holdco and the TES LPs will be formed shortly before the completion of the Business Combination. For this reason, SWMAC Holdco and the TES LPs are not expected to be formed during this Application process. To ensure that the BCUC has the appropriate level of oversight with respect to SWMAC Holdco and the TES LPs, it is proposed that their formation documents be filed with the BCUC as a compliance filing subsequent to the issuance of any BCUC orders in this Application.

Corix Multi-Utility Services Inc.

15. CMUS is a corporation incorporated under the laws of British Columbia. CMUS is a wholly-owned subsidiary of CUI which is a wholly-owned subsidiary of CII.

16. CMUS is a public utility under the *UCA*. It owns and operates the following public utility systems in British Columbia:

- a) the Transferred TES, which are not included in the Business Combination:
 - i) Burnaby Mountain District Energy Utility pursuant to the CPCN granted by Orders C-7-11 issued on July 26, 2011 and C-5-17 issued on September 15, 2017;
 - ii) UBC Neighborhood District Energy System pursuant to the CPCN granted by Order C-2-15 issued on March 10, 2015; and
 - iii) Dockside Green District Energy Utility pursuant to the CPCN granted by Orders G-166-18, C-1-08, and C-3-08.
- b) the Multi-Utility Systems, which are included in the Business Combination and will remain owned and operated by CMUS following the Business Combination:
 - i) the propane distribution utility at Panorama Mountain Village pursuant to the CPCN granted by Order C-6-03 issued on July 9, 2003;

- ii) the electricity and natural gas distribution utilities at Sonoma Pines pursuant to the CPCN granted by Order C-13-05 issued on May 25, 2005; and
- iii) the electricity and natural gas distribution utilities and the geothermal utilities at Sun Rivers:
 - a. the electricity and natural gas distribution utilities at Sun Rivers pursuant to the CPCN granted by Order C-18-99 issued on November 25, 1999;
 - b. the Belmonte Central Energy Plant Thermal Energy System at Sun Rivers pursuant to its registration as a Stream A TES by Order C-103-15 issued on June 18, 2015;
 - c. the Talasa Central Energy Plant Thermal Energy System at Sun Rivers pursuant to its registration as a Stream A TES by Order C-102-15 issued on June 18, 2015; and
 - d. the Micro TES GSX System at Sun Rivers.

Corix Infrastructure Inc.

17. CII is a corporation incorporated under the laws of British Columbia. It is indirectly controlled by BCI. CII owns and operates energy utilities, water utilities and wastewater and related businesses.⁸ CII owns and operates approximately 385 water, 310 wastewater, three thermal energy distribution, two electricity distribution, one propane, three geothermal, one municipal, and three natural gas distribution systems in Canada and the United States, serving over 800,000 people in Canada and the United States.

Corix Infrastructure (US) Inc.

18. Corix US is a corporation incorporated under the laws of Delaware. Corix US is wholly owned by CII.

19. As discussed in paragraph 29, Corix US will indirectly own the Multi-Utility Systems through its indirect ownership of CMUS resulting from CII's pre-closing restructuring.

⁸ CII has an interest in Oakridge Energy LP. CII's interest in Oakridge Energy LP will be transferred to another entity that will remain indirectly controlled by BCI and will not be part of the combined company's organizational structure following the completion of the Business Combination. With respect to the pre-closing restructuring transactions contemplated for the Business Combination, there is no disposition of Oakridge Energy LP's utility assets nor is there any change in control of Oakridge Energy LP. Following the Business Combination, control of Oakridge Energy LP will remain with BCI and the Creative Energy group.

20. Subject to the BCUC's approval in this Application⁹ and upon completion of the Business Combination, CII and possibly an affiliate or affiliates of CII will have 50% ownership of Corix US and SWMAC Holdco will acquire the remaining 50% ownership of Corix US.

TES LPs

21. Three limited partnerships will be formed under the laws of a Canadian jurisdiction. It is anticipated that the TES LPs will be formed following regulatory approvals and shortly before the completion of the Business Combination. The TES LPs will be indirectly controlled by BCI. The TES LPs will exist in an organizational structure that will be separate from the organizational structure of the combined company, Corix US, following the Business Combination.

22. Subject to obtaining regulatory approvals, the first limited partnership will own and operate the Burnaby Mountain District Energy Utility. The second limited partnership will own and operate the UBC Neighbourhood District Energy System. The third limited partnership will own and operate the Dockside Green District Energy Utility.

SW Merger Acquisition Corp.

23. SWMAC is a corporation incorporated under the laws of Delaware. SWMAC is owned by IIF Subway and Bazos CIV, L.P. ("**Bazos**").¹⁰ SWMAC owns 100% of SouthWest. Through its operating subsidiaries, SWMAC owns and operates 18 water and wastewater utility companies in the United States. SWMAC's water and wastewater utilities provide service to over 500,000 people in seven U.S. states.

SouthWest Water Company

24. SouthWest is a corporation incorporated under the laws of Delaware. It owns and operates water utility companies in the United States. It is wholly owned by SWMAC.

SWMAC Holdco

25. It is anticipated that SWMAC Holdco will be a limited partnership that will be formed under the laws of Delaware or another U.S. state. SWMAC Holdco will act as a holding company for the shareholders of SWMAC with respect to the ownership of the combined company (which will be Corix US). Following the completion of the Business Combination, SWMAC Holdco will hold 50% of the ownership interest of Corix US.

⁹ Subject also to the approval of regulators in the other jurisdictions where CII and SouthWest have utility businesses.

¹⁰ IIF Subway is indirectly owned by IIF US Holding 2 LP, and Bazos is indirectly owned by the German reinsurer, Munich RE (Münchener Rückversicherungs-Gesellschaft Aktiengesellschaft in München).

III. THE PROPOSED BUSINESS COMBINATION

26. When the Business Combination is complete, CII and possibly an affiliate or affiliates of CII will directly own 50% of Corix US and SWMAC Holdco will own the other 50% of Corix US. Corix US will indirectly own and operate all of CII's water utility and wastewater and related businesses and SouthWest's water utility and wastewater businesses through wholly-owned subsidiaries.

27. CMUS is one such subsidiary that will continue to own and operate the Multi-Utility Systems as part of CII's related businesses following the completion of the Business Combination.

28. To prepare for the Business Combination, both CII and SouthWest will undertake pre-closing restructurings. As outlined above, the Business Combination does not include the Transferred TES, and CMUS therefore proposes to undertake a pre-closing restructuring prior to completing the Business Combination.

29. During CII's pre-closing restructuring, CMUS will transfer the Transferred TES to the TES LPs, and Corix US will acquire indirect control of CMUS and CII's Canadian water utility and wastewater and related businesses. CII's pre-closing restructuring does not change BCI's indirect control over CII's water utility and wastewater and related businesses.

30. Corix US will organize a new entity herein referred to as Intermediate Newco, which is anticipated to be formed under the laws of Delaware. Intermediate Newco will be a holding company that will acquire indirect control of the utility operating subsidiaries included in the Business Combination.

31. As a part of the Intercompany Balances Settlement Steps, CMUS proposes to issue additional shares to CUI and to assume intercompany balances. These intercompany balances and certain existing intercompany balances will be extinguished as part of the Intercompany Balances Settlement Steps.

32. The combination takes place well above CMUS—at the Corix US holding company level. After CII and SouthWest complete their respective pre-closing restructurings, SWMAC will merge with and into Corix US, with Corix US as the surviving entity. Corix US will indirectly own the Multi-Utility Systems through its indirect ownership of CMUS.

33. Once the Business Combination is complete: (a) CII and possibly an affiliate or affiliates of CII will own 50% of Corix US' outstanding stock; and (b) SWMAC Holdco will own the remaining 50% of Corix US' outstanding stock, thereby sharing control of more than 20% of the voting shares of CMUS. The Transferred TES will be owned and operated by the TES LPs, which will be indirectly controlled by BCI, in a separate organizational structure.

34. As mentioned above, the Transaction Agreement requires certain conditions to be satisfied in order to complete the Business Combination. These

conditions include, but are not limited to, obtaining all applicable government approvals and consents. Given the anticipated time to complete the various closing conditions, the completion of the Business Combination is anticipated to occur in late 2023.

IV. APPLICABLE LAW AND RELEVANT PRECEDENT

i. Disposition of the Transferred TES to the TES LPs

35. CMUS submits that section 52 of the *UCA* is applicable to this component of the Application.

36. The BCUC confirmed that section 52 of the *UCA* is applicable to a similar transaction involving Shannon Wall Centre Apartments LP disposing of its interest in the Shannon Estates Thermal Energy System to an affiliate.¹¹ Similar to this Application, the proposed disposition in the Shannon Estates matter consisted of the entire energy system without modification to its operation or infrastructure.

37. Section 52 states as follows:

(1) Except for a disposition of its property in the ordinary course of business, a public utility must not, without first obtaining the commission's approval,

(a) dispose of or encumber the whole or a part of its property, franchises, licences, permits, concessions, privileges or rights, or

(b) by any means, direct or indirect, merge, amalgamate or consolidate in whole or in part its property, franchises, licences, permits, concessions, privileges or rights with those of another person.

(2) The commission may give its approval under this section subject to conditions and requirements considered necessary or desirable in the public interest.

38. Pursuant to section 52 of the *UCA*, CMUS requires BCUC approval to dispose of its 100% interests in the Transferred TES, noting that in this case the property and related business will be transferred fully intact to the affiliated TES LPs and accordingly there will be no change in utility operation, service or control. CMUS therefore requests the approval of the BCUC pursuant to section 52 for the disposition of 100% of its interests in the Transferred TES to the TES LPs.

¹¹ BCUC Order G-160-18 and Reasons for Decision.

BCUC Decision Criteria for Section 52 Disposition

39. Section 52(2) of the *UCA* states that the BCUC may give its approval under the section “subject to conditions and requirements considered necessary or desirable in the public interest”. Section 52(2) does not otherwise provide guidance on the criteria the BCUC is to consider. In cases like this one where the utility system and business will be transferred fully with no change in utility operation, the BCUC typically considers the section 52 application using the same criteria as if the utility system transfer was by way of a share transfer.

40. In past decisions on proposed acquisition of or acquisition of control of voting shares of a public utility (a “reviewable interest”), the BCUC has applied certain criteria to assist in determining whether there is potential for detrimental effects to the utility and its customers and, in the broader sense, to the public interest. The BCUC decision in the matter of an application by Kinder Morgan, Inc. and 0731297 B.C. Ltd. for the acquisition of common shares of Terasen Inc. dated November 10, 2005 (the “**KMI-Terasen Decision**”)¹² is generally applicable to the BCUC’s review of this Application.¹³ In its KMI-Terasen Decision, the BCUC applied specific criteria to assist in determining whether the public utility and the users of the services of the public utility will be detrimentally affected by a proposed acquisition. The criteria used were that:

- (a) the utility’s current and future ability to raise equity and debt financing not be reduced or impaired;
- (b) there be no violation of existing covenants that will be detrimental to the customers;
- (c) the conduct of the utility’s business, including the level of service, either now or in the future, will be maintained or enhanced;
- (d) the application be in compliance with appropriate enactments and/or regulations;
- (e) the structural integrity of the assets will be maintained in such a manner as to not impair utility service; and
- (f) the public interest will be preserved.

¹² BCUC Order and Reasons for Decision G-116-05.

¹³ The KMI-Terasen Decision has been applied in numerous BCUC decisions.

41. Furthermore, the BCUC in the KMI-Terasen Decision elaborated on criterion (f) by stating the following:

- (a) the public interest must be considered with respect to the Utilities over which the BCUC has jurisdiction;
- (b) the public interest must be viewed in the context of the scope of the approval that is being requested;
- (c) the BCUC panel concluded that the public interest criterion should not extend beyond issues normally considered by the BCUC for the general regulation of public utilities in the public interest; and
- (d) the BCUC panel concluded that it is appropriate to exclude issues that are more appropriately dealt with by, or that are more properly within the jurisdiction of, other agencies or levels of government.

ii. Acquisition of Transferred TES

42. Assuming the BCUC grants the requested section 52 approval above, the TES LPs will require CPCNs for the Transferred TES they will acquire, own and operate. CMUS on behalf of the to-be-formed TES LPs therefore requests that the BCUC grant CPCNs for the Transferred TES to each of the TES LPs to ensure compliance with section 45 of the *UCA*.

43. Section 45(1) states as follows:

Except as otherwise provided, after September 11, 1980, a person must not begin the construction or operation of a public utility plant or system, or an extension of either, without first obtaining from the commission a certificate that public convenience and necessity require or will require the construction or operation.

44. Section 46(3) states as follows:

Subject to subsections (3.1) to (3.3), the commission may, by order, issue or refuse to issue the certificate, or may issue a certificate of public convenience and necessity for the construction or operation of a part only of the proposed facility, line, plant, system or extension, or for the partial exercise only of a right or privilege, and may attach to the exercise of the right or privilege granted by the certificate, terms, including conditions about the duration of the right or privilege under this Act as, in its judgment, the public convenience or necessity may require.

BCUC Decision Criteria for Acquisition of Transferred TES

45. In this case, the BCUC has already granted CPCNs for the construction and operation of the Transferred TES, and these systems are presently operating and providing thermal energy services to customers. CMUS submits therefore that the pertinent consideration is whether the TES LPs have the human and financial resources and expertise to operate and maintain the Transferred TES to continue to provide services that are safe, reliable and in all respects just and reasonable.

iii. Issuance of Additional CMUS Shares and Assumption of Intercompany Balances

46. The Intercompany Balances Settlement Steps require CMUS to issue additional shares to CUI and to assume intercompany balances. Pursuant to subsections 50(2), (5), and (7) of the *UCA*, CMUS must obtain the BCUC's approval before the Intercompany Balances Settlement Steps can be completed.

47. Subsections 50(2), (5), and (7) state as follows:

50(2) Except in the case of a security evidencing indebtedness payable less than one year from its date, a public utility must not issue a security without first obtaining approval of the commission under this section and, if section 54 applies, under that section.

50(5) Without first obtaining the commission's approval, a public utility must not guarantee the payment of all or part of a loan or all or part of the interest on a loan made to another person.

50(7) The commission may give its approval under this section subject to conditions and requirements considered necessary or desirable in the public interest.

BCUC Decision Criteria for Section 50 Approvals

48. The BCUC may give its approval to the Intercompany Balances Settlement Steps—issuance of additional CMUS shares and assumption of intercompany balances—if it determines that it is necessary or desirable in the public interest.

iv. Acquisition of Reviewable Interest in CMUS

49. Completing the Business Combination will result in SWMAC Holdco acquiring and, with CII and possibly an affiliate or affiliates of CII, sharing indirect control of more than 20% of the voting shares of CMUS. SWMAC on behalf of the to-be-formed SWMAC Holdco therefore requests BCUC approval pursuant to section 54 of the *UCA* to acquire a “reviewable interest” in CMUS.

50. Specifically, section 54(7) of the UCA states the following:

A person must not acquire or acquire control of such number of any class of shares of a public utility as (a) in themselves, or (b) together with shares already owned or controlled by the person and the person's associates, cause the person to have a reviewable interest in a public utility unless the person has obtained the commission's approval.

51. Section 54(4) of the UCA defines a "reviewable interest" in a public utility as owning or controlling more than 20% of the voting shares outstanding of any class of shares of that public utility. Section 54(7) of the UCA prohibits an entity from acquiring or acquiring control of more than 20% of the voting shares of a public utility without the BCUC's approval. In this case, CMUS is the public utility because it will continue to own and operate the Multi-Utility Systems following the completion of the Business Combination.

52. Prior to completing the Business Combination, CII will undergo a restructuring to prepare for the combination. The pre-closing restructuring will not trigger any requirements to seek section 54 approvals. The disposition of the Transferred TES from CMUS to the TES LPs will necessitate the BCUC's approval under section 52 (discussed earlier).

53. The Business Combination contemplates the combination of CII's water utility and wastewater and related businesses with SouthWest's water utility and wastewater businesses. The Multi-Utility Systems that form part of CII's related businesses are owned and operated by CMUS. The combination will happen at the Corix US holding company level by SWMAC Holdco acquiring 50% ownership of Corix US. This will result in SWMAC Holdco indirectly acquiring and, with CII and possibly an affiliate or affiliates of CII, sharing control of more than 20% of the voting shares of CMUS.

54. The BCUC is to consider this component of the Application pursuant to section 54(9) of the UCA. Section 54(9) states the following:

The commission may give its approval under this section subject to conditions and requirements it considers necessary or desirable in the public interest, but the commission must not give its approval under this section unless it considers that the public utility and the users of the service of the public utility will not be detrimentally affected.

BCUC Decision Criteria for Section 54 Acquisition of Reviewable Interest

55. As discussed earlier, the criteria set out in the KMI-Terasen Decision are applicable for the review of an application under section 54(7) of the UCA. The criteria are set out in paragraphs 40 and 41 of this Application.

V. ANALYSIS

i Disposition of the Transferred TES to the TES LPs

56. The Transferred TES and associated business that are not included in the Business Combination involve core district energy operations and joint venture investments. This business will carry on as normal in an organizational structure that is separate from the combined company. BCI will retain indirect control over the Transferred TES and associated business.

57. The Transferred TES business involves thermal energy production and distribution (i.e., the distribution of steam/hot water and chilled water for space heating and cooling and DHW heating), as opposed to other types of energy distribution operations (e.g., natural gas, electricity, or propane distribution).

58. The Transferred TES business will retain the “Corix” name, and Lisa Sparrow will continue in her role as President and Chief Executive Officer of the business. The business will be focused, with Lisa Sparrow’s and BCI’s full attention, on accelerating the development and operation of safe, reliable, sustainable and cost-effective thermal energy solutions.

59. The transfer of the Transferred TES to the TES LPs will not change the functional integrity of the energy systems nor their operation or service. The customers of the Transferred TES will be unaffected by this transfer.

60. CMUS has considered the potential impact of this proposed restructuring on financial and technical capacity, in particular, as these are key indicators of whether the users of the services of the transferred public utilities could be detrimentally affected, and submits:

(a) The TES business will continue to be indirectly controlled by BCI. BCI is one of the largest investment managers in Canada, responsible for \$211 billion (CAD) assets under management as of March 31, 2022, and it has an active direct infrastructure investment program including water utilities, electric and gas utilities, energy and power companies, liquids transportation pipelines, and rapid transit infrastructure. As a result, the Transferred TES and associated business will continue to have access to equity financing as they did in the past.

(b) No degradation to operations of the Transferred TES is expected as the thermal energy system technical expertise will remain with the transferred TES business. Many of the technical and operational staff that work on the Transferred TES presently will remain with the business. This is intended to ensure the continuation of operations in a safe and reliable manner.

Financing Ability

61. Following the transfer to the TES LPs, the Transferred TES will continue to be indirectly controlled by BCI.

62. As demonstrated by the BCUC's prior approvals for affiliates of BCI to acquire indirect control of CMUS, the BCUC has been satisfied that BCI and its affiliates have the financial resources to ensure that the Transferred TES can maintain their current level of service, as well as to allocate the necessary financial commitments to ensure long-term investment in the Transferred TES and any other thermal energy system the business may propose to develop in British Columbia.

Impact on Existing Covenants

63. CII and Corix US are borrowers under a credit facility with a syndicate of banks. CII's water utility and wastewater business assets and entities and energy assets currently fall within the security package for that credit agreement. It is anticipated that the credit agreement will be repaid and terminated in connection with completing the Business Combination. It is anticipated that Intermediate Newco will hold the third-party debt and credit facilities for the combined company.

64. It is currently contemplated that the BCI-controlled holding company of the TES LPs likewise will enter into a new credit agreement to provide debt financing for the ongoing TES business. The prospective new credit agreement is not expected to impact customer rates given that the rates for the Transferred TES are set on the basis of deemed debt interest rates pursuant to the BCUC's generic cost of capital determinations.

65. While the Business Combination and the transfer of the Transferred TES might require customary consents from transactional counterparties, it is expected that the Business Combination will not result in any violations of existing covenants that will be detrimental to the Transferred TES or its customers.

Conduct of Utility Business and Customer Service

66. As discussed above, it is anticipated that conduct of the business and the level of customer service will not change as a result of CII's pre-closing restructuring. The terms and conditions of the service provided as set out in the existing customer service agreements for the Transferred TES will not change.

67. The Transferred TES and associated business will carry on in new entities, the TES LPs, indirectly controlled by BCI. The TES business will remain headquartered in Vancouver, British Columbia.

68. The individuals who manage and operate the Transferred TES and who interact with the customers and the BCUC will remain largely the same. Many of the technical and operational staff that work on the Transferred TES will become part of the TES business following the completion of the Business Combination. This will ensure the continuation of operations in a safe and reliable manner. For at least one year following

the completion of the Business Combination, the TES business will have access to the corporate and administrative services it needs through a Transition Services Agreement among Corix, Corix US and the entities controlled by BCI that will operate the Transferred TES and manage the business.

Compliance with Appropriate Enactments and Regulations

69. The Transaction Agreement contemplates that the Business Combination will not be completed unless and until certain conditions are satisfied. These conditions include, but are not limited to, the parties receiving all required governmental and regulatory authorizations.

Structural Integrity of Assets

70. The Transferred TES will be transferred fully intact without any change to their functional integrity or their operation. The Transferred TES will continue to be operated in the same way and no equipment is being modified or changed that is not within the normal course of business. Day-to-day operation will not change.

Restructuring Will Preserve Public Interest

71. The transfer of the Transferred TES and associated business from CMUS to the TES LPs will preserve the public interest. Ultimate control of the Transferred TES will not change. The operation of the Transferred TES is not anticipated to change, nor will the terms and condition and level of customer service. The transfer to the TES LPs is not expected to have any impact on the rates paid by the customers of the Transferred TES.

72. CII's pre-closing restructuring will have no impact on the BCUC's continuing regulation of the Transferred TES. This Application includes a request for the BCUC to issue new CPCNs to the entities acquiring the Transferred TES in order to own and operate the utility systems. These entities will be public utilities subject to regulation by the BCUC pursuant to the *UCA*. Transferring each of the Transferred TES into a separate entities will improve transparency and facilitate regulatory oversight.

73. There will no longer be a distinction between costs incurred at the corporate or regional level. The new structure of the business will provide greater transparency with respect to the corporate costs incurred.

ii. Issuance of Additional CMUS Shares and Assumption of Intercompany Balances

74. The Intercompany Balances Settlement Steps require CMUS to issue additional shares to CUI and to assume new intercompany balances. Certain existing intercompany balances owed by CMUS and the new intercompany balances assumed by CMUS will be settled as part of the Intercompany Balances Settlement Steps. This will have a positive impact on CMUS following the completion of the Business Combination

because the Intercompany Balances Settlement Steps will have settled existing intercompany balances.

75. The Intercompany Balances Settlement Steps are necessary pre-closing restructuring transactions in order to settle certain intercompany balances on a tax efficient basis and to complete the Business Combination. Therefore, it is necessary or desirable in the public interest for the BCUC to approve the Intercompany Balances Settlement Steps in order to facilitate the completion of the Business Combination.

iii. Acquisition of a Reviewable Interest in CMUS

76. The Business Combination will result in the acquisition by SWMAC Holdco of a reviewable interest in CMUS through SWMAC Holdco's acquisition of 50% ownership of Corix US. CMUS will continue to own and operate the Multi-Utility Systems following the Business Combination.

Combined Company's Financing Ability

77. Following the Business Combination, the Multi-Utility Systems owned and operated by CMUS will be indirectly owned and controlled by CII and possibly an affiliate or affiliates of CII and SWMAC Holdco through their joint ownership of Corix US. CII and possibly an affiliate or affiliates of CII will own 50% of Corix US and SWMAC Holdco will own the remaining 50% of Corix US.

78. The combined company will have the financial resources to ensure that CMUS can maintain its current level of service, as well as to allocate the necessary financial commitments to ensure the operation of the Multi-Utility Systems.

Impact on Existing Covenants

79. As noted in paragraph 63, CII and Corix US are borrowers under a credit facility with a syndicate of banks. CII's water utility and wastewater business assets and entities and district energy assets currently fall within the security package for that credit agreement. It is anticipated that the credit agreement will be repaid and terminated in connection with completing the Business Combination. It is anticipated that Intermediate Newco will hold the third-party debt and credit facilities for the combined company.

80. While the Business Combination and the transfer of the Transferred TES might require customary consents from transactional counterparties, it is expected that the Business Combination will not result in any violations of existing covenants that will be detrimental the CMUS' customers of the Multi-Utility Systems.

Conduct of Public Utility Business and Customer Service

81. CMUS' operation of the Multi-Utility Systems and the level of customer service will not change as a result of the Business Combination. The Business Combination does not contemplate any change in the day-to-day operations of CMUS with respect to the Multi-Utility Systems. CMUS will maintain its local employees, offices

and facilities necessary to meet its obligations to its customers in British Columbia. In addition, SouthWest and CII have committed to refrain from involuntary reductions in force related to the Business Combination for 12 months after its completion.

Compliance with Appropriate Enactments and Regulations

82. The Transaction Agreement contemplates that the Business Combination will not be completed unless and until certain conditions are satisfied. These conditions include, but are not limited to, the parties receiving all required governmental and regulatory authorizations.

Structural Integrity of Assets

83. The Business Combination will not have any adverse impact on the infrastructure of the Multi-Utility Systems or its operation by CMUS. The Multi-Utility Systems owned and operated by CMUS will continue to be operated in the same way and no equipment is being modified or changed that is not within the normal course of business.

Business Combination Will Preserve Public Interest

84. The Business Combination will preserve the public interest. CMUS' operation of its Multi-Utility Systems will not change, nor will the level of customer service. The Business Combination will have no immediate impact on the rates paid by CMUS' customers. CMUS' customers in British Columbia will not suffer any detrimental impact to the utility services they obtain from CMUS with respect to the Multi-Utility Systems.

VI. NOTICE

85. Notices and correspondence regarding this Application should be served to:

Counsel to the Corix Parties:

Ian Webb
Lawson Lundell LLP
1600-925 West Georgia St.
Vancouver, British Columbia
V6C 3L2
Telephone: 604-631-9117
iwebb@lawsonlundell.com

Counsel to the SouthWest Parties:

Robin Sirett
McCarthy Tétrault LLP
2400-745 Thurlow Street
Vancouver, British Columbia
V6E 0C52
Telephone: 604-643-7911
rsirett@mccarthy.ca

VII. RELIEF SOUGHT

This Application requests the BCUC to find that:

- (1) the proposed transfer by CMUS of the Transferred TES to the TES LPs will not detrimentally affect the customers of the Transferred TES;
- (2) the issuance of additional CMUS shares and CMUS assuming intercompany balances as a step to complete the Business Combination is necessary or desirable in the public interest; and
- (3) the acquisition by SWMAC Holdco of a reviewable interest in CMUS will not detrimentally affect the customers of CMUS' Multi-Utility Systems,

and make the following orders:

- (1) approval of CMUS' proposed disposition of its 100% interests in the Transferred TES to the TES LPs pursuant to section 52 of the *UCA*;
- (2) grant CPCNs to the TES LPs for each of the Transferred TES pursuant to sections 45 and 46 of the *UCA*;
- (3) approval of CMUS' proposed issuance of additional shares to CUI and to assume intercompany balances pursuant to section 50 of the *UCA*;
- (4) approval of SWMAC Holdco's proposed acquisition of 50% ownership of Corix US pursuant to subsection 54(7) and (9) of the *UCA* and thereby acquiring a reviewable interest in CMUS; and
- (5) grant such other relief as may be appropriate and necessary to allow the completion of the pre-closing restructuring and the consummation of the Business Combination.

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Respectfully submitted and dated at Vancouver, British Columbia, this 16th day of November, 2022.



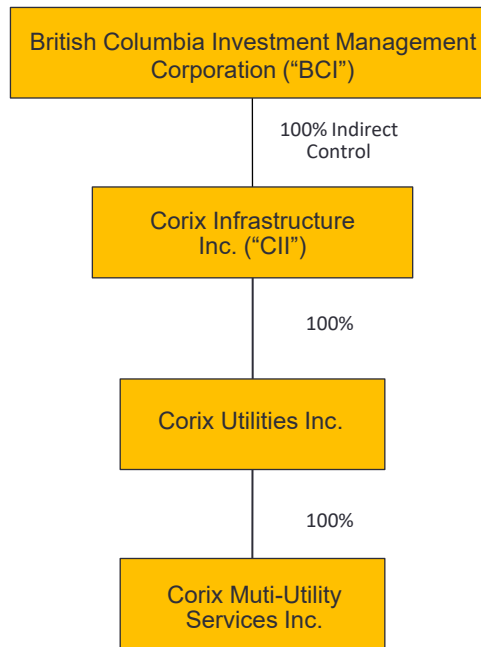
Ian Webb
Lawson Lundell LLP



Robin Sirett
McCarthy Tétrault LLP

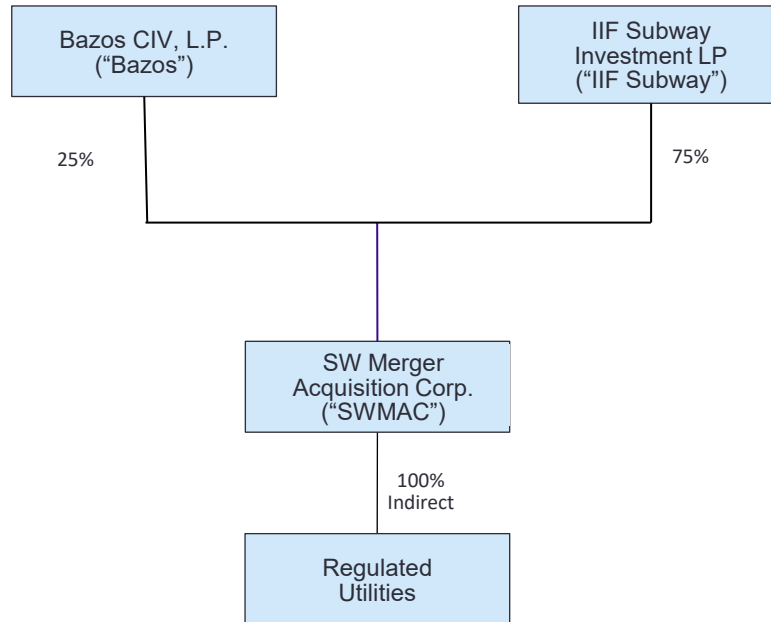
APPENDIX A

Corix Simplified Current

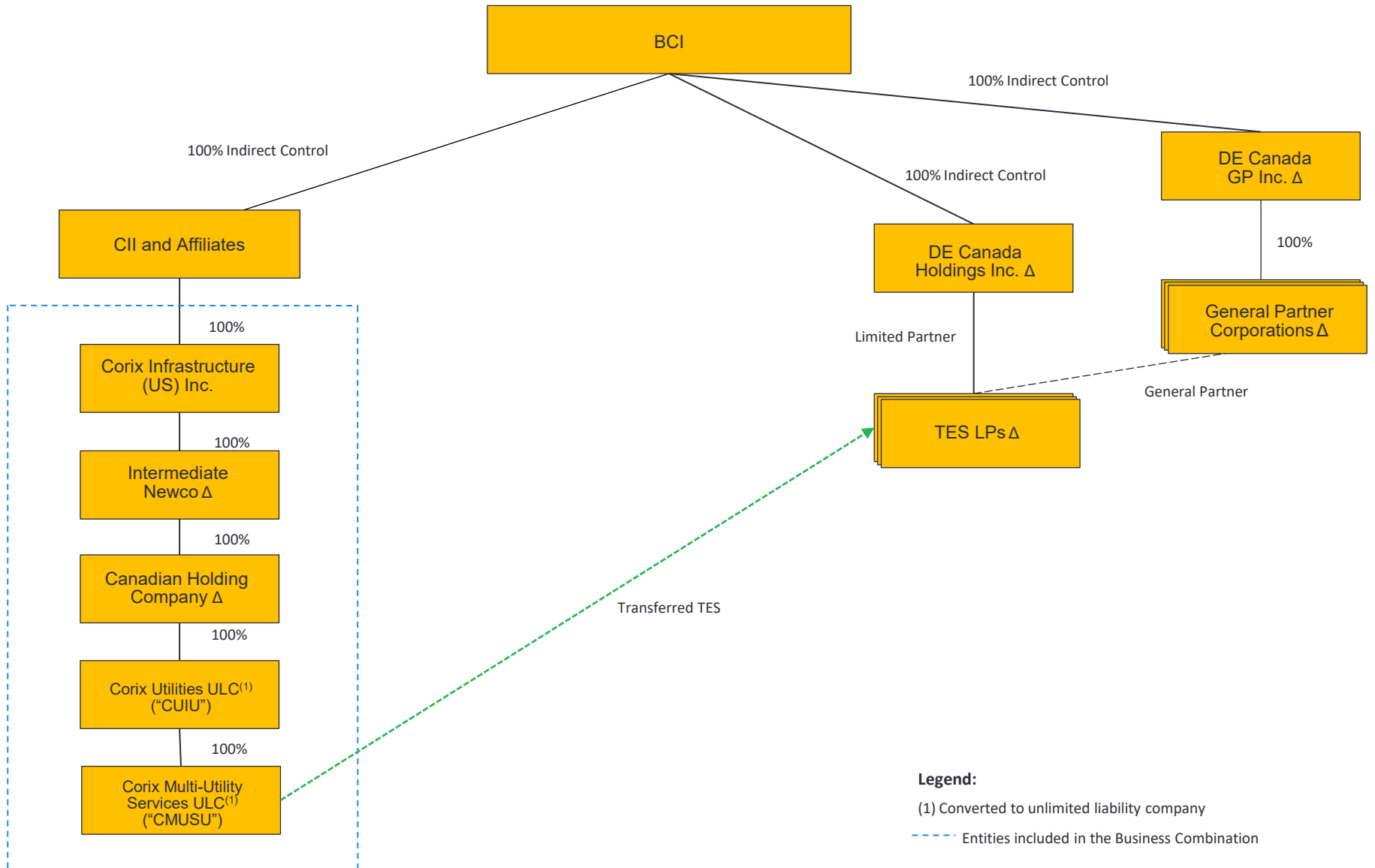


Δ: Indicates entities that have not been formed at the time of filing this Application. The Business Combination contemplates the formation of several entities that are not yet in existence in order to complete the Business Combination. The naming of these to-be-formed entities in the Application and Appendix A is for ease of reference and may be subject to change once they are formed.

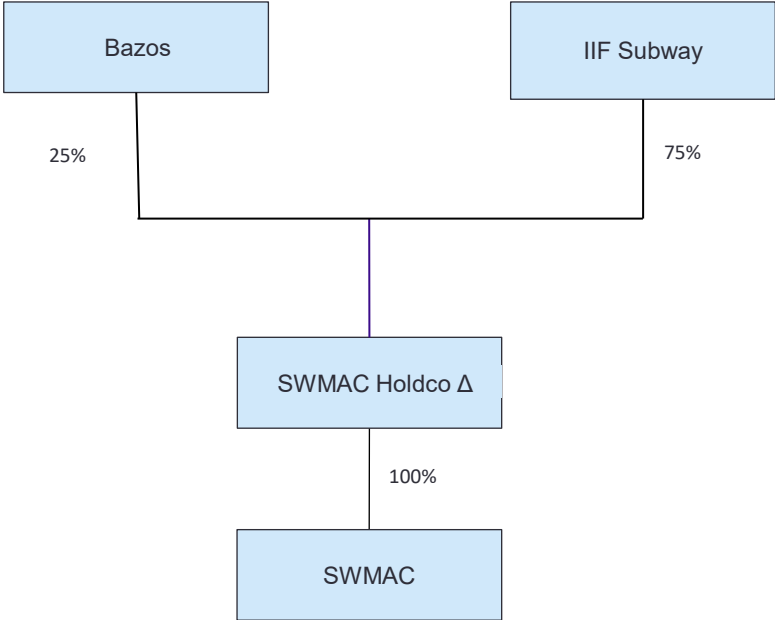
SouthWest Simplified Current



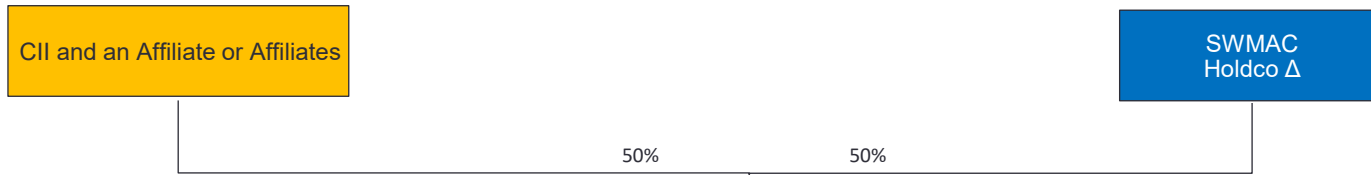
Corix Simplified Pre-closing, Post-restructuring



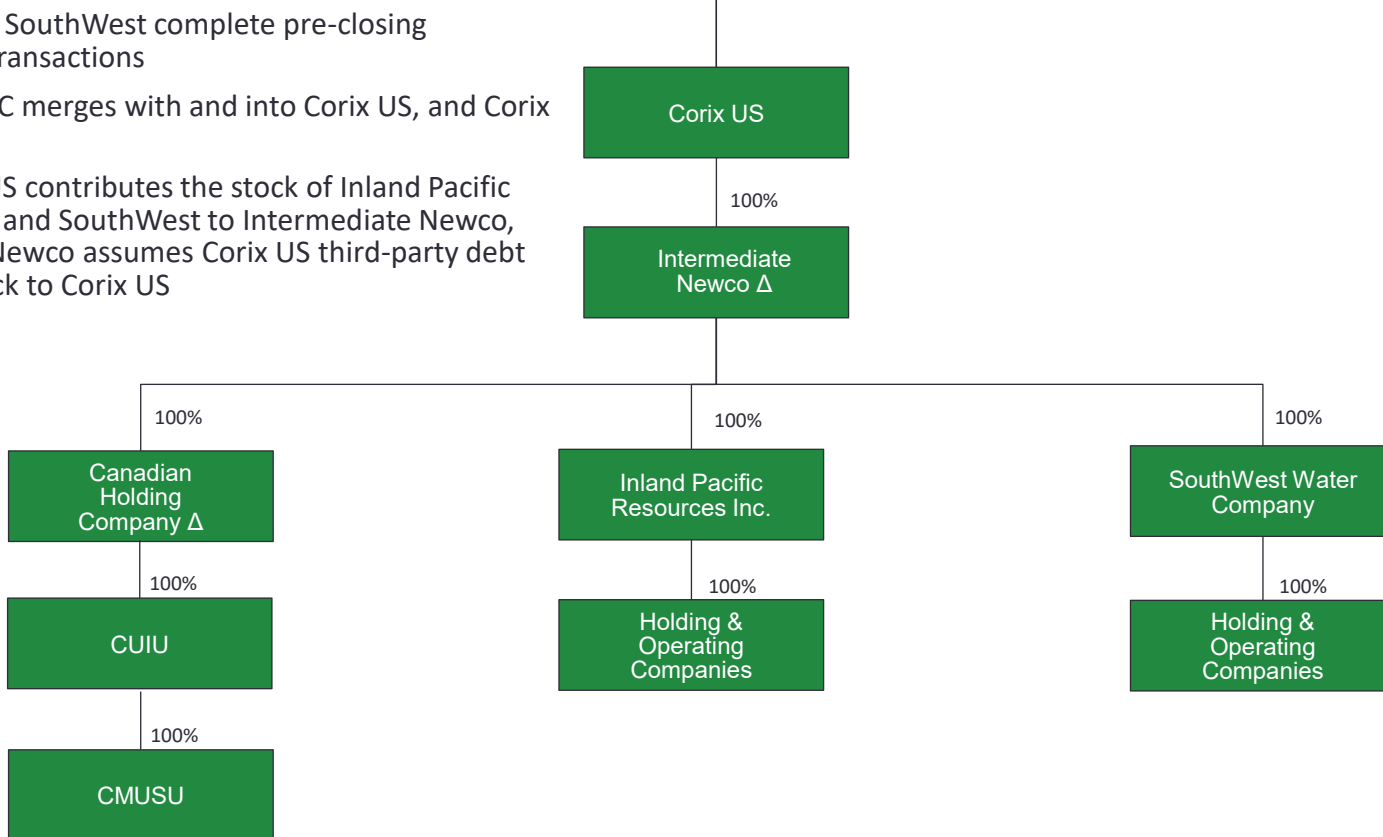
SouthWest Pre-Closing Post-Restructuring



Business Combined Company – Simplified Post-Closing



- ▶ **Step 1:** CII and SouthWest complete pre-closing restructuring transactions
- ▶ **Step 2:** SWMAC merges with and into Corix US, and Corix US survives
- ▶ **Step 3:** Corix US contributes the stock of Inland Pacific Resources Inc. and SouthWest to Intermediate Newco, Intermediate Newco assumes Corix US third-party debt and issues stock to Corix US



APPENDIX B

ORDER NUMBER

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

An Application for Orders pursuant to sections 45, 46, 50, 52, and 54 of the *Utilities Commission Act* ("**UCA**")

BEFORE:

on _____, 2023

ORDER

WHEREAS:

- A. On November 16, 2022, Corix Multi-Utility Systems Inc. ("**CMUS**") and SW Merger Acquisition Corp. ("**SWMAC**") filed an application with the British Columbia Utilities Commission ("**BCUC**") for approvals pursuant to sections 45, 46, 50, 52, and 54 of the *Utilities Commission Act* ("**UCA**") in connection to a reorganization involving a public utility and acquisition of a reviewable interest in a public utility (the "**Application**");
- B. CMUS owns and operates a number of public utility systems in British Columbia that are subject to the jurisdiction of the BCUC pursuant to the *UCA* and the BCUC's Thermal Energy System (TES) Regulatory Framework Guidelines, and is a public utility pursuant to the *UCA*;
- C. CMUS is a wholly-owned subsidiary of Corix Utilities Inc. ("**CUI**"), which is a wholly-owned subsidiary of Corix Infrastructure Inc. ("**CII**"), and is indirectly controlled by British Columbia Investment Management Corporation;
- D. On August 26, 2022, CII and Corix Infrastructure (US) Inc. ("**Corix US**"), entered into an agreement with IIF Subway Investment L.P., SWMAC and SouthWest Water Company ("**SouthWest**") providing a framework for combining CII's water utility and wastewater and related businesses in Canada and the United States with the water utility and wastewater businesses of SouthWest in the United States (the "**Business Combination**"). The Business Combination includes CII's electricity, natural gas

and propane distribution utilities, geothermal energy utilities, and municipal service operations of CII related to its U.S. and Canadian water utility and wastewater operations, and does not include the Stream B thermal energy utilities owned by CMUS;

E. The three Stream B thermal energy utilities of CMUS excluded from the Business Combination are as follows:

- Burnaby Mountain District Energy Utility, granted a CPCN by Orders C-7-11 and C-5-17;
- UBC Neighborhood District Energy System, granted a CPCN by Order C-2-15; and
- Dockside Green District Energy Utility, granted a CPCN by Orders G-166-18, C-1-08, and C-3-08.

F. The Application seeks the following approvals:

- pursuant to section 52 of the *UCA*, approval for CMUS to transfer its interest in each of its three Stream B thermal energy utilities that it owns and operates (the “**Transferred TES**”) to three limited partnerships to be formed under the laws of a Canadian jurisdiction (the “**TES LPs**”);
- subject to the BCUC’s approval requested above in (a) and pursuant to section 45 and 46 of the *UCA*, a certificate of public convenience and necessity (“**CPCN**”) to each of the TES LPs to enable them to lawfully own and operate their respective Transferred TES;
- pursuant to section 50 of the *UCA*, approval for CMUS to issue additional shares and to assume intercompany balances in connection with the restructuring of CII;
- pursuant to section 54 of the *UCA*, approval for a limited partnership to be formed under the laws of Delaware or another U.S. state (“**SMWAC Holdco**”) to acquire 50% ownership of Corix Infrastructure (US) Inc. (“**Corix US**”), which will result in SWMAC Holdco sharing indirect ownership of CMUS with CII and possibly an affiliate or affiliates of CII;

G. [*summary of regulatory proceeding*]; and

H. The BCUC has reviewed the Application and evidence filed in the proceeding and makes the following determinations.

NOW THEREFORE pursuant to sections 45, 46, 50, 52, and 54 of the *UCA*, the BCUC orders as follows:

1. The transfer of CMUS' interests in each of the Burnaby Mountain District Energy Utility, UBC Neighborhood District Energy System, and Dockside Green District Energy Utility (Transferred TES) to TES LPs is approved, subject to the condition ordered in 3, below.
2. Once CMUS' interests in the Transferred TES are transferred to TES LPs, a certificate of public convenience and necessity is granted to each of the TES LPs for the Transferred TES, subject to the condition ordered in 3, below.
3. CMUS must file with the BCUC the formation documents of the TES LPs within 14 days of their formation.
4. CMUS is approved to issue additional shares and to assume intercompany balances in connection with the restructuring of CII and its subsidiaries as set forth in the Application.
5. The acquisition by SWMAC Holdco of a reviewable interest in CMUS is approved, subject to the condition ordered in 6, below.
6. SWMAC must file with the BCUC the formation documents of SWMAC Holdco within 14 days of its formation.

DATED at the City of Vancouver, in the Province of British Columbia, this _____ day of _____, 2023.

BY ORDER
