



Corix Utilities Inc.

Approvals Relating to Restructuring Transactions

February 23, 2023

Alberta Utilities Commission

Decision 27802-D01-2023

Corix Utilities Inc.

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Proceeding 27802

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The Commission may, no later than 60 days from the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

Contents

1	Decision summary	1
2	Description of the application and process	1
3	No-harm test	2
4	Order	6
	Appendix 1 – Proceeding participants	7
	Appendix 2 – Summary of Commission directions	8

1 Decision summary

1. In this decision, the Alberta Utilities Commission approves, subject to conditions included in paragraphs 20, 21 and 23, two requests from Corix Utilities Inc. (CUI) with respect to certain planned restructuring transactions.

2 Description of the application and process

2. Corix Utilities (Foothills Water) Inc. (Corix Foothills) owns and operates a water utility located at Heritage Pointe, Alberta. Corix Foothills is a wholly owned subsidiary of CUI, which is a wholly owned subsidiary of Corix Infrastructure Inc. (Corix Infrastructure). Corix Infrastructure is indirectly controlled by the British Columbia Investment Management Corporation.

3. Corix Foothills and CUI are subject to the jurisdiction of the Commission pursuant to the *Public Utilities Act* and the *Public Utilities Designation Regulation*.

4. On August 26, 2022, Corix Infrastructure and Corix Infrastructure (US) Inc. entered into a transaction agreement with IIF Subway Investment LP, SW Merger Acquisition Corp. and SouthWest Water Company. The transaction agreement provides a framework for combining Corix Infrastructure's water utility and wastewater and related businesses in Canada and the United States with the water utility and wastewater businesses of SouthWest Water Company. CUI and Corix Foothills will become part of the organizational structure of the combined company, Corix Infrastructure (US) Inc., following the business combination.

5. Corix Infrastructure proposes to undertake or cause its subsidiaries to undertake a restructuring prior to the completion of the business combination. Some transactions in the proposed restructuring (the proposed restructuring transactions) will require the approval of the Commission.

6. CUI requested that the Commission:

- (i) Pursuant to Section 101 of the *Public Utilities Act*, issue an order authorizing CUI to issue its own shares and/or evidences of indebtedness to Corix Infrastructure and its affiliates that are subsidiaries of Corix Infrastructure, as part of pre-closing restructuring transactions of Corix Infrastructure and its subsidiaries.
- (ii) Pursuant to Section 102 of the *Public Utilities Act*, issue an order authorizing CUI to record on its books a transfer of all of its shares to a corporation to be formed

under the laws of a Canadian jurisdiction, referred to as CRU Midco, which will be owned by Corix Infrastructure at the time of the transfer.¹

7. CUI indicated that when the business combination is complete, Corix Infrastructure and possibly an affiliate or affiliates of Corix Infrastructure will directly own 50 per cent of Corix Infrastructure (US) Inc., and that Corix Infrastructure (US) Inc. will indirectly own and operate all of Corix Infrastructure's water utility and wastewater and related businesses, through wholly owned subsidiaries, such as Corix Foothills.² CUI stated that Corix Foothills will continue to own and operate the water utility at Heritage Pointe following the completion of the business combination.³

8. The Commission issued a notice of application on November 24, 2022. No responses to the notice were received by the stipulated date of December 9, 2022.⁴ The notice of application indicated that if no written submissions were received, the Commission may make its decision without further notice or process.

9. On December 19, 2022, the Commission issued a number of information requests (IRs) to CUI. The Commission considers that the close of record for this proceeding was January 18, 2023, the date that CUI filed its responses to the Commission's IRs.⁵

3 No-harm test

10. The central question in deciding whether to approve transactions under sections 101(2)(a) and 102(1) of the *Public Utilities Act*, is whether customers are harmed by the transactions. The customers in this case are the users of the water provided by Corix Foothills. The Commission has traditionally applied a no-harm test, which has been articulated as follows:

... that it should weigh the potential positive and negative impacts of the transactions to determine whether the balance favours customers or at least leaves them no worse off, having regard to all of the circumstances of the case. If so, then the Board [Alberta Energy and Utilities Board] considers that the transactions should be approved.⁶

11. The no-harm test considers the proposed transactions in the context of both financial impacts and service level impacts to customers. If harm is identified, the Commission considers whether the harm can and should be mitigated through approval conditions so that the transaction can proceed.

¹ Exhibit 27802-X0001, application, PDF page 2.

² CUI provided, in Appendix A of the application (Exhibit 27802-X0001, starting at PDF page 11), three charts that show: (i) a simplified current organization chart for the Corix group of companies; (ii) a simplified pre-closing, post-restructuring organization chart for the Corix group of companies; and (iii) a simplified post-closing organization chart for the business combined company.

³ Exhibit 27802-X0001, application, PDF page 5, paragraphs 20-21.

⁴ One statement of intent to participate (SIP) was inadvertently filed on the record of Proceeding 27802. The SIP was filed in response to a separate proceeding involving Corix Foothills, Proceeding 27844, and was relocated by AUC staff to that proceeding.

⁵ The IR responses are in Exhibit 27802-X0008.

⁶ Decision 2000-41: TransAlta Utilities Corporation, Sale of Distribution Business, Application 2000051-1, File 6404-3, July 5, 2000, page 8.

12. The factors considered by the Commission to assess whether customers would be harmed by the proposed transactions include the following, as applicable in the circumstances of each application:

- The impact to the rates and charges passed on to customers;
- The operational benefit or risk related to the acquiring party's utility experience; which encompasses the following considerations:
 - (i) impact on the financial profile of the utility for purposes of attracting capital;
 - (ii) sufficient, continuing Commission oversight of the utility;
 - (iii) continuing management and operational expertise post-transaction;
 - (iv) impact on customer costs related to tax, pension funds or other matters; and
 - (v) desire of the acquiring party to operate a utility business in Alberta when compared to the divesting party.
- Protection of customers to the maximum extent;
- Customers are not entitled to a level of post-transaction regulatory certainty they would not have realized if the transaction had not been approved; and
- After consideration of the potential positive and negative impacts of the proposed share transactions, customers are at least no worse off after the transaction is completed.⁷

13. CUI submitted that the proposed restructuring transactions satisfy the no-harm test and will have no effect on the service of Corix Foothills nor the rates charged by Corix Foothills. It added that neither Corix Foothill's operation of the water utility nor the level of customer service will change. It stated that the proposed restructuring transactions will not alter CUI's direct control of Corix Foothills.⁸

14. When asked to describe any changes expected to the availability and cost associated with the operating and long-term debt of Corix Foothills as a result of the proposed restructuring transactions and the business combination, CUI indicated that Corix Foothills has positive cash flow, does not have any debt and stated that this is not expected to change.⁹

15. CUI explained that the business combination will not have any immediate impact on the rates paid by the customers of Corix Foothills, and stated that Corix Foothills has not applied to change its rates in connection with CUI's request for approval of the proposed restructuring transactions.¹⁰ The Commission's approval of the restructuring transactions is contingent on CUI's representation that the restructuring transactions will have no effect on the water rates charged by Corix Foothills. Corix Foothills has an active application before the Commission for approval of its 2023-2025 revenue requirement and rates in Proceeding 27844. The Commission will scrutinize that application to ensure that it is consistent with the representations made in Proceeding 27802. CUI confirmed that the transaction costs incurred in relation to the restructuring transactions will not be recovered from the customers of Corix Foothills. CUI indicated that the business combination is expected to produce financial benefits such as cost

⁷ Decision 25089-D01-2020: AltaGas Canada Inc. and PSPIB Cycle Investments Inc., Application for Transfer of Shares and Stock, Proceeding 25089, February 18, 2020, paragraphs 21-22.

⁸ Exhibit 27802-X0001, application, PDF pages 8-9, paragraphs 37-39.

⁹ Exhibit 27802-X0008, CUI-AUC-2022DEC19-001(b), PDF page 1.

¹⁰ Exhibit 27802-X0008, CUI-AUC-2022DEC19-002, PDF page 2.

reductions in the areas of board governance, senior executives, and audits, and Corix Foothill's customers may realize these benefits in future rate applications.¹¹

16. CUI was asked to explain why, as part of the proposed restructuring transactions, CUI would be converted to an unlimited liability company, and whether this conversion will or could have any consequences for Corix Foothills. In response, CUI explained that the conversion of CUI to an unlimited liability company will be done because of the application of certain U.S. tax rules, and this conversion will not have any consequences for Corix Foothills or its customers and that Corix Foothills will remain a corporation with limited liability.¹²

17. CUI was asked to indicate whether any assets of Corix Foothills are pledged as security for any debts of CUI or any of CUI's affiliates, and CUI responded that the answer is no. CUI was also asked whether there are any provisions in place to prevent Corix Foothills' assets from being pledged as security for any debts of CUI or any of its affiliates now, or after the proposed restructuring transactions and the business combination. CUI noted that while under Corix Infrastructure's current credit agreement, material subsidiaries are required to pledge assets as security, Corix Foothills is not a material subsidiary and even if it were to become one, material subsidiaries that are defined in the credit agreement as exempt regulated material subsidiaries are prohibited from pledging assets as security without the consent of a governmental entity such as the Commission. CUI anticipated that any credit agreement that might be put in place in connection with the proposed restructuring transactions would include a similar exemption.¹³

Commission findings

18. Based on its review of the material filed by CUI in the application and the IR responses, the Commission finds that the proposed restructuring transactions and business combination will not have a harmful effect on the regulated utility service provided by Corix Foothills or the rates charged for those services, nor will it negatively affect the Commission's regulatory oversight of Corix Foothills or CUI. The Commission concludes that customers will not be harmed by the proposed transactions, based on the no-harm test set out previously.

19. Neither the day-to-day operation of Corix Foothills, nor its status as a limited liability corporation, will change as a result of the proposed restructuring transactions and business combination. The transaction costs associated with the proposed restructuring transactions and the business combination will not be passed on to the customers of Corix Foothills. Corix Foothills is expected to continue to have positive cash flow and no debt. Corix Foothills has not applied to change its rates in connection with the proposed restructuring transactions and business combination, and any future changes to Corix Foothills' rates that result from the proposed restructuring transactions and business combination will be assessed by the Commission as part of any future rate applications in which these changes are included.

20. CUI anticipated that any credit agreements that might be put in place in connection with the proposed restructuring transactions would include exemptions preventing the assets of Corix Foothills from being pledged as security for any debt of CUI or any of its affiliates, at least without the consent of the Commission. The Commission considers that protection of Corix Foothills' assets from creditors of CUI or any of its affiliates is very important, and finds that

¹¹ Exhibit 27802-X0008, CUI-AUC-2022DEC19-002, PDF page 2.

¹² Exhibit 27802-X0008, CUI-AUC-2022DEC19-003(a) and (b), PDF page 3.

¹³ Exhibit 27802-X0008, CUI-AUC-2022DEC19-003(c), PDF page 3.

measures should be taken by CUI to ensure this protection remains in place. Therefore, the Commission directs CUI, as a condition of the approvals given by the Commission in this decision, to ensure that any future credit agreements that are put in place after the restructuring transactions, include wording that states that the assets of Corix Foothills are exempt from being pledged as security for such credit agreements, unless CUI applies and receives permission from the Commission to waive this exemption.

21. CUI requested permission to record on its books a transfer of all of its shares to a corporation to be formed under the laws of a Canadian jurisdiction, referred to as CRU Midco. It noted that the naming of the to-be-formed company referred to as CRU Midco is for ease of reference and may be subject to change.¹⁴ CUI contemplated that CRU Midco will be formed before the completion of the business combination but not before the end of this current proceeding. To ensure the Commission has the appropriate level of oversight with respect to CRU Midco, CUI proposed that the formation documents be filed with the Commission as a compliance filing subsequent to the issuance of any Commission orders in this current proceeding. The Commission accepts CUI's proposal and directs that CUI file, as a post-disposition document on the record of the current proceeding, Proceeding 27802, the formation documents for the actual company referred to in the current proceeding as CRU Midco, no later than 15 calendar days after the actual company has been incorporated.

22. Currently, both Corix Foothills and CUI are designated under the *Public Utilities Designation Regulation* as owners of public utilities to which sections 101, 102 and 109 of the *Public Utilities Act* apply. The Commission and its predecessors have previously confirmed that the traditional practice is to designate both the utility itself (as the utility operator or owner of utility assets) and the direct owner, or parent of the utility.

23. CUI will be converted to an unlimited liability corporation by a step in the restructuring of Corix Infrastructure and its subsidiaries. Given the Commission's traditional practice, the Commission considers that Corix Utilities Unlimited Liability Corporation, as the direct owner of Corix Foothills, should be designated as the owner of a public utility for the purposes of sections 101, 102 and 109 of the *Public Utilities Act* once it is formed. The Commission directs CUI to notify the Commission no later than 15 calendar days after the conversion of CUI to an unlimited liability corporation is effected, at which point the Commission will request that the regulation be amended to reflect the conversion.

24. The Commission understands that there is likely to be a lag period between the time when CUI is converted to an unlimited liability corporation, and the time when the *Public Utilities Designation Regulation* is amended. Therefore, following its conversion to an unlimited liability corporation, Corix Utilities Unlimited Liability Corporation is deemed to be subject to sections 101, 102 and 109 of the *Public Utilities Act* and must conduct itself as if it were so designated, until such time as it is designated as the owner of a public utility by the Lieutenant Governor in Council.

¹⁴ Exhibit 27802-X0001, application, note at the bottom of PDF page 11.

4 Order

25. It is hereby ordered that, conditional upon the directions included in paragraphs 20, 21 and 23 of this decision:

- (1) The Alberta Utilities Commission grants approval to Corix Utilities Inc., pursuant to Section 101 of the *Public Utilities Act*, to issue its own shares and/or evidences of indebtedness to Corix Infrastructure Inc. and its affiliates that are subsidiaries of Corix Infrastructure Inc., as part of pre-closing restructuring transactions of Corix Infrastructure Inc. and its subsidiaries.
- (2) The Alberta Utilities Commission grants approval to Corix Utilities Inc., pursuant to Section 102 of the *Public Utilities Act*, to record on its books a transfer of all of its shares to a corporation to be formed under the laws of a Canadian jurisdiction, referred to as CRU Midco, which will be owned by Corix Infrastructure Inc. at the time of the transfer.

Dated on February 23, 2023.

Alberta Utilities Commission

(original signed by)

Matthew Oliver, CD
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
Corix Utilities Inc. (CUI)

Alberta Utilities Commission
Commission panel M. Oliver, CD, Commission Member
Commission staff M. Anderson (Commission counsel) D. Mitchell E. Chu K. O'Neill

Appendix 2 – Summary of Commission directions

This section is provided for the convenience of readers. In the event of any difference between the directions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail.

1. CUI anticipated that any credit agreements that might be put in place in connection with the proposed restructuring transactions would include exemptions preventing the assets of Corix Foothills from being pledged as security for any debt of CUI or any of its affiliates, at least without the consent of the Commission. The Commission considers that protection of Corix Foothills' assets from creditors of CUI or any of its affiliates is very important, and finds that measures should be taken by CUI to ensure this protection remains in place. Therefore, the Commission directs CUI, as a condition of the approvals given by the Commission in this decision, to ensure that any future credit agreements that are put in place after the restructuring transactions, include wording that states that the assets of Corix Foothills are exempt from being pledged as security for such credit agreements, unless CUI applies and receives permission from the Commission to waive this exemption. paragraph 20
2. CUI requested permission to record on its books a transfer of all of its shares to a corporation to be formed under the laws of a Canadian jurisdiction, referred to as CRU Midco. It noted that the naming of the to-be-formed company referred to as CRU Midco is for ease of reference and may be subject to change. CUI contemplated that CRU Midco will be formed before the completion of the business combination but not before the end of this current proceeding. To ensure the Commission has the appropriate level of oversight with respect to CRU Midco, CUI proposed that the formation documents be filed with the Commission as a compliance filing subsequent to the issuance of any Commission orders in this current proceeding. The Commission accepts CUI's proposal and directs that CUI file, as a post-disposition document on the record of the current proceeding, Proceeding 27802, the formation documents for the actual company referred to in the current proceeding as CRU Midco, no later than 15 calendar days after the actual company has been incorporated. paragraph 21
3. CUI will be converted to an unlimited liability corporation by a step in the restructuring of Corix Infrastructure and its subsidiaries. Given the Commission's traditional practice, the Commission considers that Corix Utilities Unlimited Liability Corporation, as the direct owner of Corix Foothills, should be designated as the owner of a public utility for the purposes of sections 101, 102 and 109 of the *Public Utilities Act* once it is formed. The Commission directs CUI to notify the Commission no later than 15 calendar days after the conversion of CUI to an unlimited liability corporation is effected, at which point the Commission will request that the regulation be amended to reflect the conversion. paragraph 23