

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, OCTOBER 16, 2024

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JOINT PETITION OF

COMMONWEALTH UTILITIES, INC.,
ENVIRONMENTAL SYSTEMS SERVICE, LTD.,
R. CRAIG JEBSON,
KAREN J. CARROLL
and
H2 FLOW CO.

CASE NO. PUR-2024-00175

For approval of change of control under
Chapter 5 of Title 56 of the Code of Virginia

ORDER FOR NOTICE AND COMMENT

On September 20, 2024, Commonwealth Utilities, Inc. ("CU"), along with Environmental Systems Service, Ltd. ("ESS"), R. Craig Jebson and Karen J. Carroll ("Sellers"), and H2 Flow Co. ("Buyer") (collectively, "Joint Petitioners") filed with the State Corporation Commission ("Commission") a joint petition ("Joint Petition"), pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code"),¹ requesting approval of the upstream change in control of CU due to the sale of ESS from Sellers to Buyer.²

Per the Joint Petition, CU is a Virginia corporation that provides water service to several subdivisions in Culpeper County, Virginia.³ The Joint Petitioners also represent that CU is a "public utility," as defined in the Utility Transfers Act, because it "owns or operates facilities within the Commonwealth . . . for the furnishing of sewerage facilities or water."⁴ The Joint

¹ Code § 56-88 *et seq.* ("Utility Transfers Act").

² Joint Petition at 1.

³ *Id.* at 2.

⁴ *Id.* at 4 (quoting Code § 56-88).

Petitioners state that in 1993, CU received a certificate of public convenience and necessity ("CPCN") to serve customers in the Fairview Acres development, which includes a subdivision known as Fairview Estates.⁵ According to the Joint Petitioners, the CPCN was amended in 1994 to add the Clairmont subdivision.⁶ The Joint Petitioners represent that CU also currently serves the Rotherwood, Foxhill, and Kavanaugh Meads subdivisions.⁷

The Joint Petitioners state that CU's parent company is ESS, a Virginia corporation that operates a business offering environmental consulting, water and wastewater treatment, field sampling and environmental testing, and water pump sales and services.⁸ According to the Joint Petitioners, ESS owns 100% of the shares of CU.⁹

The Joint Petitioners represent that Sellers are individuals who own 100% of the issued and outstanding shares of ESS.¹⁰

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.* According to the Joint Petition, although the Rotherwood and Foxhill subdivisions are part of the Fairview Acres development and fall within CU's certificated service territory, Kavanaugh Meads is not part of CU's certificated service territory based on the service territory map currently on file with the Commission. *Id.* The Joint Petitioners state that this is an "inadvertent error" that they intend to remedy by separately filing a request to amend the CPCN to expand CU's service territory and update the map to include the Kavanaugh Meads subdivision. *Id.* On October 4, 2024, CU filed with the Commission in Case No. PUR-2024-00187 the Application of Commonwealth Utilities, Inc. to Amend Its Certificate of Public Convenience and Necessity and for Retroactive Approval of Acquisition of Facilities ("00187 Application"). In that application, CU stated that while conducting diligence in the present proceeding (*i.e.*, PUR-2024-00175), it "determined that it had been operating outside of its certificated territory in serving Kavanaugh Meads, and further that CU had not received Commission approval for the acquisition of the Kavanaugh Meads system." 00187 Application at 3. Accordingly, CU is seeking in that proceeding an amendment to its existing CPCN and a retroactive approval of its acquisition of the Kavanaugh Meads water system under Chapter 5 of Title 56 of the Code to allow it to continue serving Kavanaugh Meads. *Id.*

⁸ Joint Petition at 2-3.

⁹ *Id.* at 3.

¹⁰ *Id.*

As stated in the Joint Petition, Buyer is a Virginia corporation formed by Todd J. Eagle for the purposes of this transaction.¹¹ The Joint Petitioners represent that 100% of the shares of Buyer are owned by H2 Flow 401(k) ROBS, which is in turn wholly owned by Mr. Eagle.¹²

The Joint Petitioners request that the Commission authorize the sale of all the issued and outstanding shares of stock in ESS, the sole stockholder of CU, from Sellers to Buyer (the "Proposed Transaction").¹³ According to the Joint Petitioners, the Proposed Transaction will transfer indirect ownership interests in CU from Sellers to Buyer, and will not affect the near-term operations, financing, or management of CU.¹⁴ The Joint Petitioners represent that the Proposed Transaction will not involve a change in direct control of CU or a transfer of the stock of CU,¹⁵ will not change CU's current rates and terms and conditions of service, and will not result in any change to CU's capital structure because "CU will remain a wholly owned subsidiary of ESS."¹⁶

The Joint Petitioners state that the Proposed Transaction, if approved, will result in new ownership of the parent company of CU, which will continue to provide water services to customers in Virginia.¹⁷ According to the Joint Petition, "Sellers will work with Buyer on a consulting basis to facilitate a smooth transition to the new ownership structure," meaning "CU

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 1.

¹⁴ *Id.* at 1-2.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 2.

will continue to have the requisite financial, technical, and managerial expertise and resources necessary to provide . . . water service post-Transaction with no change to the operations of CU."¹⁸ Therefore, the Joint Petitioners assert, the Proposed Transaction "will not in any way interrupt CU's ability to provide adequate and reliable service to its customers in Virginia,"¹⁹ and, thus, according to Joint Petitioners, "adequate service to the public at just and reasonable rates will not be impaired or jeopardized."²⁰

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this matter should be docketed; the Joint Petitioners should provide notice of their Joint Petition; interested persons should have an opportunity to comment on the Joint Petition; and the Commission's Staff ("Staff") should be directed to investigate the Petition and present its findings in a report ("Staff Report"). We further find that a Hearing Examiner should be appointed to rule on all discovery matters that arise during the course of this proceeding. Due to the complexity of issues presented in the Joint Petition, we further find that the statutory deadline as provided for in Code § 56-88.1 should be extended from November 19, 2024, to March 19, 2025.

To promote administrative efficiency and timely service of filings upon participants, the Commission will, among other things, direct the electronic filing of testimony and pleadings unless they contain confidential information, and require electronic service on parties to this proceeding.

¹⁸ *Id.* at 5.

¹⁹ *Id.*

²⁰ *Id.* (quoting Code § 56-90).

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUR-2024-00175.

(2) All pleadings, briefs, or other documents required to be served in this matter should be submitted electronically to the extent authorized by 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice").²¹ Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and should comply with 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. Any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.

(3) Pursuant to 5 VAC 5-20-140, *Filing and service*, of the Rules of Practice, the Commission directs that service on parties and the Staff in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, parties and the Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no party or the Staff is impeded from preparing its case.

(4) As provided by Code § 12.1-31 and 5 VAC 5-20-120, *Procedure before hearing examiners*, of the Commission's Rules of Practice, a Hearing Examiner is appointed to rule on any discovery matters that arise during the course of this proceeding and any motions *pro hac vice* that are filed. A copy of each filing relating to discovery matters or motions *pro hac vice*

²¹ 5 VAC 5-20-10 *et seq.*

made with the Office of the Clerk in this matter shall also be sent electronically to the Office of the Hearing Examiners.²²

(5) An electronic copy of the Joint Petition may be obtained by submitting a written request to counsel for the Joint Petitioners, Eric J. Wallace, GreeneHurlocker, PLC, 4908 Monument Avenue, Suite 200, Richmond, Virginia 23230, or ewallace@greenehurlocker.com. Interested persons also may download unofficial copies from the Commission's website: scc.virginia.gov/pages/Case-Information.

(6) On or before November 6, 2024, the Joint Petitioners shall provide to customers of CU the following notice via electronic mail, first-class mail, or hand-delivery:

NOTICE OF JOINT PETITION OF
COMMONWEALTH UTILITIES, INC.,
ENVIRONMENTAL SYSTEMS SERVICE, LTD.,
R. CRAIG JEBSON, KAREN J. CARROLL,
AND H2 FLOW CO.
FOR APPROVAL OF CHANGE OF CONTROL UNDER
CHAPTER 5 OF TITLE 56 OF THE CODE OF VIRGINIA
CASE NO. PUR-2024-00175

On September 20, 2024, Commonwealth Utilities, Inc. ("CU"), along with Environmental Systems Service, Ltd. ("ESS"), R. Craig Jebson and Karen J. Carroll ("Sellers"), and H2 Flow Co. ("Buyer") (collectively, "Joint Petitioners") filed with the State Corporation Commission ("Commission") a joint petition ("Joint Petition"), pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code"), requesting approval of the upstream change in control of CU due to the sale of ESS from Sellers to Buyer.

Per the Joint Petition, CU is a Virginia corporation that provides water service to several subdivisions in Culpeper County, Virginia. The Joint Petitioners also represent that CU is a "public utility," as defined in the Utility Transfers Act (Virginia Code § 56-88 *et seq.*), because it "owns or operates facilities within the Commonwealth . . . for the furnishing of sewerage facilities or water." The Joint Petitioners state that in 1993, CU received a certificate of public convenience and necessity ("CPCN") to serve

²² Such electronic copies shall be sent to: OHEParalegals@scc.virginia.gov.

customers in the Fairview Acres development, which includes a subdivision known as Fairview Estates. According to the Joint Petitioners, the CPCN was amended in 1994 to add the Clairmont subdivision. The Joint Petitioners represent that CU also currently serves the Rotherwood, Foxhill, and Kavanaugh Meads subdivisions.

The Joint Petitioners state that CU's parent company is ESS, a Virginia corporation that operates a business offering environmental consulting, water and wastewater treatment, field sampling and environmental testing, and water pump sales and services. According to the Joint Petitioners, ESS owns 100% of the shares of CU.

The Joint Petitioners represent that Sellers are individuals who own 100% of the issued and outstanding shares of ESS.

As stated in the Joint Petition, Buyer is a Virginia corporation formed by Todd J. Eagle for the purposes of this transaction. The Joint Petitioners represent that 100% of the shares of Buyer are owned by H2 Flow 401(k) ROBS, which is in turn wholly owned by Mr. Eagle.

The Joint Petitioners request that the Commission authorize the sale of all the issued and outstanding shares of stock in ESS, the sole stockholder of CU, from Sellers to Buyer (the "Proposed Transaction"). According to the Joint Petitioners, the Proposed Transaction will transfer indirect ownership interests in CU from Sellers to Buyer, and will not affect the near-term operations, financing, or management of CU. The Joint Petitioners represent that the Proposed Transaction will not involve a change in direct control of CU or a transfer of the stock of CU, will not change CU's current rates and terms and conditions of service, and will not result in any change to CU's capital structure because "CU will remain a wholly owned subsidiary of ESS."

The Joint Petitioners state that the Proposed Transaction, if approved, will result in new ownership of the parent company of CU, which will continue to provide water services to customers in Virginia. According to the Joint Petition, "Sellers will work with Buyer on a consulting basis to facilitate a smooth transition to the new ownership structure," meaning "CU will continue to have the requisite financial, technical, and managerial expertise and resources necessary to provide . . . water service post-Transaction with no change to the operations of CU." Therefore, the Joint Petitioners assert, the Proposed Transaction "will not in any way

interrupt CU's ability to provide adequate and reliable service to its customers in Virginia," and, thus, according to Joint Petitioners, "adequate service to the public at just and reasonable rates will not be impaired or jeopardized."

Further details of the proposal are set forth in the Joint Petition. Interested persons are encouraged to review the Joint Petition and supporting exhibits for such further detail.

The Commission entered an Order for Notice and Comment that, among other things, directed the Joint Petitioners to provide notice of their Joint Petition and provided interested persons an opportunity to comment on the Joint Petition.

To promote administrative efficiency and timely service of filings upon participants, the Commission has directed the electronic filing of testimony and pleadings, unless they contain confidential information, and has required electronic service on parties to this proceeding. Please refer to the Commission's Order for Notice and Comment for further instructions concerning Confidential or Extraordinarily Sensitive Information.

An electronic copy of the Joint Petition may be obtained by submitting a written request to counsel for the Joint Petitioners, Eric J. Wallace, GreeneHurlocker, PLC, 4908 Monument Avenue, Suite 200, Richmond, Virginia 23230, or ewallace@greenehurlocker.com.

On or before December 9, 2024, any interested person may file comments on the Joint Petition by following the instructions on the Commission's website:

<https://scc.virginia.gov/casecomments/Submit-Public-Comments>.

Those unable, as a practical matter, to submit comments electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All such comments shall refer to Case No. PUR-2024-00175.

On or before December 9, 2024, any person or entity wishing to participate as a respondent in this proceeding may do so by filing a notice of participation with the Clerk of the Commission at: scc.virginia.gov/clk/efiling. Those unable, as a practical matter, to file a notice of participation electronically may file such notice by U.S. mail to the Clerk of the Commission at the address listed above. Such notice of participation shall include the email addresses of such parties or their counsel, if available.

Pursuant to 5 VAC 5-20-80 B, *Participation as a respondent*, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10, *et seq.* ("Rules of Practice"), any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2024-00175. For additional information about participation as a respondent, any person or entity should obtain a copy of the Commission's Order for Notice and Comment.

On or before December 9, 2024, any interested person may request that the Commission convene a hearing in this matter by filing a request for hearing electronically via scc.virginia.gov/clk/efiling. Those unable, as a practical matter, to file electronically may file a request for hearing by U.S. mail to the Clerk of the Commission at the address listed above. Requests for a hearing shall include: (i) a precise statement of the filing party's interest in the proceeding; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in this matter. All filings shall refer to Case No. PUR-2024-00175.

A copy of any notices of participation and requests for hearing shall be sent to counsel for the Joint Petitioners at the address above.

The Joint Petition, the Commission's Rules of Practice and the Commission's Order for Notice and Comment may be viewed at: scc.virginia.gov/pages/Case-Information.

COMMONWEALTH UTILITIES, INC., ENVIRONMENTAL SYSTEMS SERVICE, LTD.,
R. CRAIG JEBSON, KAREN J. CARROLL, AND H2 FLOW CO.

(7) On or before November 6, 2024, the Joint Petitioners shall serve a copy of this Order for Notice and Comment on the following local officials, to the extent the position exists, in each county, city, and town in which CU provides service in the Commonwealth of Virginia: the chairman of the board of supervisors of each county; the mayor or manager (or equivalent

official) of every city and town; and the county, city, or town attorney. Service shall be made electronically where possible; if electronic service is not possible, service shall be made by either personal delivery or first class mail to the customary place of business or residence of the person served.

(8) On or before December 2, 2024, the Joint Petitioners shall file proof of the notice and service required by Ordering Paragraphs (6) and (7), including the name, title, address, and electronic mail address (if applicable) of each official served, with the Clerk of the Commission by filing electronically at scc.virginia.gov/clk/efiling/.

(9) On or before December 9, 2024, any interested person may file comments on the Joint Petition by following the instructions on the Commission's website: <https://scc.virginia.gov/casecomments/Submit-Public-Comments>. Those unable, as a practical matter, to submit comments electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All such comments shall refer to Case No. PUR-2024-00175.

(10) On or before December 9, 2024, any person or entity wishing to participate as a respondent in this proceeding may do so by filing a notice of participation with the Clerk of the Commission at: scc.virginia.gov/clk/efiling. Those unable, as a practical matter, to file a notice of participation electronically may file such notice by U.S. mail to the Clerk of the Commission at the address listed above. Such notice of participation shall include the email addresses of such parties or their counsel, if available. Pursuant to 5 VAC 5-20-80 B, *Participation as a respondent*, of the Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization,

corporation, or government body participating as a respondent must be represented by counsel as required by 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2024-00175.

(11) Within three (3) business days of receipt of a notice of participation as a respondent, the Joint Petitioners shall serve a copy of their Joint Petition and supporting materials on the respondent, unless these materials already have been provided to the respondent.

(12) On or before December 9, 2024, any interested person may request that the Commission convene a hearing in this matter by filing a request for hearing electronically via scc.virginia.gov/clk/efiling. Those unable, as a practical matter, to file electronically may file a request for hearing by U.S. mail to the Clerk of the Commission at the address listed above. Requests for a hearing shall include: (i) a precise statement of the filing party's interest in the proceeding; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in this matter. All filings shall refer to Case No. PUR-2024-00175.

(13) On or before December 16, 2024, the Joint Petitioners shall file a response to any requests for hearing filed in this matter.

(14) Staff shall investigate the Joint Petition. On or before February 6, 2025, the Staff shall file with the Clerk of the Commission a Staff Report containing its findings and recommendations and promptly shall serve a copy of the Staff Report on counsel to the Joint Petitioners and any respondents.

(15) On or before February 20, 2025, the Joint Petitioners may file with the Clerk of the Commission any response in rebuttal to comments filed in this case, and to the Staff Report.

(16) Any documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, except as modified herein, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

(17) The Commission's Rule of Practice 5 VAC 5-20-260, *Interrogatories or requests for production of documents and things*, shall be modified for this proceeding as follows: responses and objections to written interrogatories and requests for production of documents shall be served within five (5) business days after receipt of the same. In addition to the service requirements of 5 VAC 5-20-260 of the Rules of Practice, on the day that copies are filed with the Clerk of the Commission, a copy of the interrogatory or request for production shall be served electronically on the party to whom the interrogatory or request for production is directed or the assigned Staff attorney, if the interrogatory or request for production is directed to the Staff.²³ Except as modified herein, discovery shall be in accordance with Part IV of the Commission's Rules of Practice, 5 VAC 5-20-240 *et seq.*

(18) Finally, the Commission is extending the statutory deadline for this proceeding as provided for by Code § 56-88.1, from November 19, 2024, to March 19, 2025.

(19) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

²³ The assigned Staff attorney is identified on the Commission's website, scc.virginia.gov/pages/Case-Information, by clicking "Docket Search," then clicking "Search by Case Information," and entering the case number, PUR-2024-00175, in the appropriate box.