

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Woodlawn Utilities Corporation	:	
	:	
Application for Certification of Public	:	05-0345
Convenience and Necessity to Provide	:	
Water Service to Sheridan Subdivision	:	
Near New Milford, in Winnebago County,	:	
Illinois.	:	

MOTION TO COMPEL
AND TO VACATE PROCEDURAL SCHEDULE

NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), through its counsel, and moves, pursuant to 83 Ill. Admin. Code 200.190, 200.345, 200.370, and 200.410(b), for an order compelling Woodlawn Utilities Corporation (“Woodlawn” or “Company”) to produce data requested by Staff. In support thereof the Staff states as follows:

1. On June 3, 2005, Woodlawn filed an Application for Certification of Public Convenience and Necessity to Provide Water Service to Sheridan Subdivision near New Milford, in Winnebago County, with supporting testimony and schedules with the Clerk of the Illinois Commerce Commission.
2. On July 13, 2005, a prehearing was held by an Administrative Law Judge, and a schedule was set in this matter providing for Staff/Intervenor direct testimony to be filed on October 13, 2005.
3. Staff has promulgated several Staff data requests and served them upon the Company, in a manner fully in compliance with the Rules of Practice before the

Commission. The data requests, date of service, and dates by which responses were requested are as follows:

- Data requests SK1.01 through 1.04 were sent to the Company on June 30, 2005. Responses were requested on or before July 14, 2005. (See attached Exhibit A)
- Data requests WD 1.01 through 1.38 were sent to the Company on June 22 and responses were requested by July 23, 2005. (See attached Exhibit B)

4. Respondent Woodlawn has not provided responses to the data requests SK 1-01 through 1-04 or WD 1.01, 1.06, 1.13, 1.14, 1.17 through 1.38.

5. The information requested by Staff clearly is calculated to lead to the discovery of relevant evidence.

6. Staff counsel has contacted Mitchell Berg and Michael Megurdichian of Woodlawn in an attempt to resolve discovery issues, but this consultation has failed to yield an adequate resolution of the dispute. Discussions took place during August regarding discovery in this docket and other pending Woodlawn dockets. On September 21, 2005, Staff counsel sent an e-mail to the Company explaining the necessity of the Company providing responses to these data requests. On September 26, Staff counsel sent a letter to the Company stating that if responses were not received by September 28, 2005, Staff would proceed with a Motion to Compel.

7. The Company has indicated a willingness to cooperate with Staff. The Company most recently has committed to provide responses by October 3, 2005. However, responses to the above enumerated data requests have not been provided to date. Assuming answers are provided on October 3, Staff will not have sufficient time to conduct its analysis and prepare testimony by October 13, 2005. Therefore, Staff avers pursuant to Section 200.350 of the *Rules of Practice before the Illinois Commerce*

Commission, 83 Ill. Admin. Code 200.350 that consultation and reasonable efforts to resolve discovery disputes have failed.

8. The policy on discovery as set forth in the Rules of Practice before the Illinois Commerce Commission is to provide information in a prompt, timely and efficient manner that allows all parties to develop all issues fully. To this end, the Commission's rules of practice support a broad scope of discovery:

It is the policy of the Commission to obtain full disclosure of all relevant and material facts to a proceeding.

83 Ill. Admin. Code 200.340.

9. Woodlawn is the only party that can provide the information requested by the Staff. For this reason, the Staff has no alternative but to request this information from Woodlawn. If this motion to compel is denied, Staff will be unable to commence an analysis of the rates proposed by Woodlawn. Thus, the Commission and the ALJ will be without relevant information to determine whether the proposed certificate of convenience and necessity should be issued.

10. As stated above, to date, Staff has been unable to commence its analysis. The current schedule contemplates Staff and Interveners filing testimony on October 13, 2005. Accordingly, Staff requests that the current schedule in this matter be vacated and the matter be set for a status hearing during the week of October 11 or 17, 2005 to determine whether the Company has provided the requested information and to set a modified schedule.

11. This Motion is not brought to cause delay or prejudice to any party or for purposes of delay, nor will it result in such prejudice or delay.

WHEREFORE, Staff requests that the ALJ;

- A. vacate the procedural schedule that is currently set in this matter;
- B. set a status during the week of either October 11 or October 17 to discuss Staff's discovery and scheduling concerns;
- B. enter an order compelling Woodlawn to provide responses to Staff Data Requests SK 1-01 through 1-04, WD 1.01, 1.06, 1.13, 1.14, 1.17 through 1.38.;
- C. grant such other and further relief as is equitable.

Respectfully submitted,



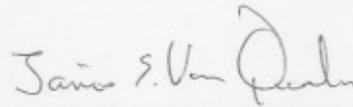
Janis Von Qualen
Staff Counsel

September 28, 2005

JANIS E. VON QUALEN
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Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
Phone: 217-785-3402
jvonqual@icc.illinois.gov

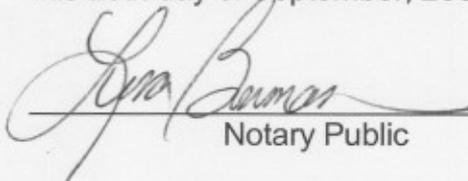
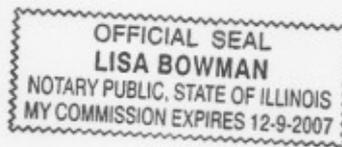
VERIFICATION

I, Janis E. Von Qualen, being first duly sworn, depose and state that I am an attorney for the Staff of the Illinois Commerce Commission; that I have read the foregoing Motion to Compel and to Vacate Procedural Schedule and know the contents thereof; and that the statements contained in the Motion are true, correct to the best of my knowledge, information and belief.



Janis E. Von Qualen
Illinois Commerce Commission

Subscribed and sworn to before me
this 28th day of September, 2005.


Notary Public

ATTACHMENT A

STATE OF ILLINOIS



ILLINOIS COMMERCE COMMISSION

June 30, 2005

VIA E-Mail

Mitchell W. Berg
Woodlawn Utilities Corporation
3127 Wallin Ave.
Rockford, IL 61101

Re: Docket No. 05-0345 – Woodlawn Utilities Corporation, Request for Certificate of Public Convenience and Necessity to provide water to Sheridan subdivision

Dear Mr. Morris:

Enclosed please find Staff Data Request SK 1-01 through 1-04 to Woodlawn Utilities Corporation (the "Company") regarding the above-referenced docket. Please provide the responses of the Company to Staff's data requests on or before July 14, 2005. Please note that individual responses should be provided as soon as they become available.

If you have any questions regarding these requests, please call me at (217) 785-1406.

Sincerely,

Sheena Kight

SK
Enclosure

ILLINOIS COMMERCE COMMISSION

STAFF DATA REQUESTS SK 1-01 THROUGH 1-04

Utility Company: **Woodlawn Utilities Corporation**

Regarding: **Docket No. 05-0345 – Request for Certificate of Public Convenience and Necessity to provide water to Sheridan subdivision**

Date Submitted: **June 30, 2005**

Staff of the Illinois Commerce Commission (“Staff”) hereby submits Staff Data Requests SK 1-01 through 1-04 to Woodlawn Utilities Corporation. (the “Company”). Responses should be delivered on or before July 14, 2005 (“Response Due Date”), in accordance with the instructions set forth below.

DEFINITIONS AND INSTRUCTIONS

1. “Relate to” or “refer to” shall mean, in addition to their customary and usual meaning, to reflect on, to pertain to, support, evidence, constitute, or mention.
2. “And” as well as “or “ are to be construed either disjunctively or conjunctively so as to bring within the scope of this request any matters that might be construed outside its scope.
3. The terms “document” or “documents” are intended to be comprehensive, including without limitation any kind of written or graphic material, whether typed, handwritten, printed, computer-generated, or matter of any kind from which information can be derived, however produced, reproduced or stored on paper, cards, machines, tapes, film, electronic facsimile, disks, computer tapes, printouts, computer programs or computer storage devices or any other medium, of any nature whatsoever, including all originals, copies and drafts.
4. When asked to “identify” a person, provide that person's name, job title and last known business address.
5. All documents requested herein are all those in the custody of, possession of, or control of the Company or its experts, consultants, agents, employees or representatives (including attorneys), or to which the Company or its experts, consultants, agents, employees or representatives (including attorneys) have access.

6. If any of the information requested in a data request cannot be furnished, please indicate what information is not being provided and the reason that it cannot be provided.
7. If the Company asserts any privilege as to any documents responsive to this request, it shall identify the author(s) of the document, the addressee(s), the recipients(s) of copies, the date of the document, the nature of the document (e.g., letter, memorandum, handwritten notes), the length of the document, the document's current location, and the specific reason(s) why the Company contends that the document is privileged or otherwise protected from discovery.
8. The response to each data request question should begin on a new page. As part of each response, please identify the data request question to which the response is made by typing it at the top of the page. In addition, each response should identify the name, job title and telephone number of the person or persons responsible for providing the information requested for each data request question. If any person so identified is not a witness in this proceeding, the response shall also identify the witness or witnesses who will be responsible for the answering of cross-examination questions pertaining to both the request and the response.
9. Documents provided as part of a response should be attached to the sheet containing the response. Each page of all documents provided in response to any data request question should be clearly marked with the data request question number, unless stapled together, in which case only the first page need be marked.
10. Please provide individual responses as they become available. If, in your responses to a data request, you make reference to written testimony or affidavits filed in this docket, please include page numbers and line numbers where the information sought by Staff in each question can be found.
11. Electronic responses rather than paper responses are preferred, except that original paper verification as set forth in paragraph 12 below must always be provided. If data is provided in response to a particular request, such data should be provided in an electronic format that allows data manipulation (i.e., spreadsheet – preferably Microsoft Excel - or database – preferably Microsoft Access -- not .pdf). If a portion of a response needs to be provided in paper, please provide the entire response in paper and also provide electronically the portion that is able to be provided electronically. Responses shall be provided on or before the Response Due Date as follows:

Signature

SUBSCRIBED AND SWORN to before me this ____ day of _____.
2005

NOTARY PUBLIC

13. The Company must seasonably supplement or amend any prior answer or response whenever new or additional information subsequently becomes known to the Company. The Company must also seasonably supplement any prior response to the extent of documents, objects or tangible things which subsequently come into the Company's possession or control or become known to the Company.
14. Due to the requirements regarding ex parte communications in the recently enacted State Officials and Employees Ethics Act, 5 ILCS 420/5-50, please serve your responses to these data requests to all parties on the Service List for this Docket.

DATA REQUESTS

- SK 1-01** Please provide the number of customers currently in the subdivision.
- SK 1-02** Please provide the forecasted number of customers to be served by the Sheridan Grove Utility ("Sheridan Grove") in each year for the years 2005-2010.
- SK 1-03** Please provide the forecasted revenues and expenses (both fixed and variable) for Sheridan Grove in each year for the years 2005-2010.
- SK 1-04** The Agreement (Exhibit C) states that Woodlawn will pay Nordic Investment Corporation ("NIC") 50% of gross revenue of Sheridan Grove from 2007-2015. Please describe how Woodlawn will pay NIC if expenses are greater than 50% of gross revenue from Sheridan Grove.

ATTACHMENT B

STATE OF ILLINOIS



ILLINOIS COMMERCE COMMISSION

June 23, 2005

VIA E-Mail

Mitchell Berg
Woodlawn Utilities Corporation
3127 Wallin Avenue
Rockford, Illinois 61101

Re: Docket No. 05-0345 – Woodlawn Utilities Corporation, Application for Issuance of Certificate of Public Convenience and Necessity to provide water service to Sheridan Subdivision.

Dear Mr. Berg:

Enclosed please find Staff Data Request WD 1.01 through 1.38 to Woodlawn Utilities Corporation (the "Company") regarding the above-referenced docket. Please provide the responses of the Company to Staff's data requests on or before July 22, 2005. Please note that individual responses should be provided as soon as they become available.

If you have any questions regarding these requests, please call Janis Von Qualen at (217) 785-3402. If non-lawyer Company personnel working on the responses have any questions regarding this request, they may call me at (217) 524-5040.

Sincerely,

William R. Johnson

WRJ

Enclosure

cc: Service List (Parties Only)
Ill. C.C. Docket 05-0345 (via e-mail, facsimile or regular mail)

ILLINOIS COMMERCE COMMISSION

STAFF DATA REQUESTS WD 1.01 THROUGH 1.38

Utility Company: **Woodlawn Utilities Corporation**

Regarding: **Docket No. 05-0345**

Date Submitted: **June 23, 2005**

Staff of the Illinois Commerce Commission ("Staff") hereby submits Staff Data Requests WD 1.01 through 1.38 to Woodlawn Utilities Corporation (the "Company"). Responses should be delivered on or before July 22, 2005 ("Response Due Date"), in accordance with the instructions set forth below.

DEFINITIONS AND INSTRUCTIONS

1. "Relate to" or "refer to" shall mean, in addition to their customary and usual meaning, to reflect on, to pertain to, support, evidence, constitute, or mention.
2. "And" as well as "or" are to be construed either disjunctively or conjunctively so as to bring within the scope of this request any matters that might be construed outside its scope.
3. The terms "document" or "documents" are intended to be comprehensive, including without limitation any kind of written or graphic material, whether typed, handwritten, printed, computer-generated, or matter of any kind from which information can be derived, however produced, reproduced or stored on paper, cards, machines, tapes, film, electronic facsimile, disks, computer tapes, printouts, computer programs or computer storage devices or any other medium, of any nature whatsoever, including all originals, copies and drafts.
4. When asked to "identify" a person, provide that person's name, job title and last known business address.
5. All documents requested herein are all those in the custody of, possession of, or control of the Company or its experts, consultants, agents, employees or representatives (including attorneys), or to which the Company or its experts, consultants, agents, employees or representatives (including attorneys) have access.
6. If any of the information requested in a data request cannot be furnished, please indicate what information is not being provided and the reason that it cannot be provided.
7. If the Company asserts any privilege as to any documents responsive to this request, it shall identify the author(s) of the document, the addressee(s), the

recipients(s) of copies, the date of the document, the nature of the document (e.g., letter, memorandum, handwritten notes), the length of the document, the document's current location, and the specific reason(s) why the Company contends that the document is privileged or otherwise protected from discovery.

8. The response to each data request question should begin on a new page. As part of each response, please identify the data request question to which the response is made by typing it at the top of the page. In addition, each response should identify the name, job title and telephone number of the person or persons responsible for providing the information requested for each data request question. If any person so identified is not a witness in this proceeding, the response shall also identify the witness or witnesses who will be responsible for the answering of cross-examination questions pertaining to both the request and the response.
9. Documents provided as part of a response should be attached to the sheet containing the response. Each page of all documents provided in response to any data request question should be clearly marked with the data request question number, unless stapled together, in which case only the first page need be marked.
10. Please provide individual responses as they become available. If, in your responses to a data request, you make reference to written testimony or affidavits filed in this docket, please include page numbers and line numbers where the information sought by Staff in each question can be found.
11. Electronic responses rather than paper responses are preferred, except that an original paper verification as set forth in paragraph 12 below must always be provided. If data is provided in response to a particular request, such data should be provided in an electronic format that allows data manipulation (i.e., spreadsheet – preferably Microsoft Excel - or database – preferably Microsoft Access -- not .pdf). If a portion of a response needs to be provided in paper, please provide the entire response in paper and also provide electronically the portion that is able to be provided electronically. Responses shall be provided on or before the Response Due Date as follows:

Electronic responses shall be provided to the following persons:

Janis Von Qualen
Illinois Commerce Commission
jvonqual@icc.state.il.us

William R. Johnson
Illinois Commerce Commission
bjohnson@icc.state.il.us

your responses to these data requests to all parties on the Service List for this Docket.

DATA REQUESTS

- WD 1.01 The agreement, Exhibit C, attached to the application lists the purchase price and the method of refund for the years December 31, 2005 through December 31, 2015. Please provide an estimate of the amount of revenues expected to be collected in each of the years. Also include the number of homes to be built each year.
- WD 1.02 How will Woodlawn insure that the developer is constructing the facilities so that it will provide adequate, reliable, and efficient service to its customers and is the least cost means?
- WD 1.03 Please provide a section plot map that shows where the proposed area is located so that Staff can verify the legal description found on Exhibit B.
- WD 1.04 How will sewer service be provided?
- WD 1.05 Is the Company aware of any water and/or sewer public utilities regulated by the Commission, or units of local government, which operate water or sewer systems, that are located within the vicinity of the planned certificated area? If so, please explain why they should not be considered the least cost alternative to building a completely new system.
- WD 1.06 Please provide a map of the area in which service is to be rendered pursuant to the authority sought. The map shall show all water mains and service lines for the water system and all sewer collection mains; the size (diameter) of mains to be used for each segment of the system; the proposed location of water pumping stations, storage facilities, treatment plants or stations, and any booster pumps needed to maintain proper pressure in the system.
- WD 1.07
- a. Please provide a written description of the proposed water system and the component parts of the system. The description shall show the maximum hour, maximum day, and average day demands on the water system; and shall compare such demand(s) with the corresponding capabilities of all the components of the water system.
 - b. Please provide a description of the type of pipe to be used in the water distribution system. This description shall include the type of material from which the pipe is to be fabricated and the type or types of joints to be used.
- WD 1.08 Please provide a statement evidencing that the proposed water system is capable of providing a minimum pressure of twenty (20) pounds per square

inch (psi) under normal operating conditions at the customer's service connection and an average pressure of at least thirty-five (35) pounds per square inch (psi) at the customer's service connection [83 IAC 600.230(b)].

- WD 1.09 Will fire protection be provided? If so, please provide a statement evidencing that the company's system of water mains will be of adequate size to permit the installation and proper operation of public fire hydrants. If fire protection is not proposed please identify how many flushing hydrants are proposed.
- WD 1.10 Please provide a statement evidencing that the company will avoid "dead ends" in the water distribution mains so far as possible. If such "dead ends" exist, will the water company provide facilities for flushing the water distribution mains?
- WD 1.11
- a. Please provide an estimate in full detail of the cost of construction of the water system. Include cost of mains, backbone plant, etc.
 - b. Please provide the cost of feasible alternatives to the proposed water system, such as connection to an existing public utility or municipality system, or the purchase of lake Michigan water, together with reasons for the choice that was selected and reasons why the other methods were not chosen. Explain why the method chosen is the least cost means.
- WD 1.12 Please provide the production capacity, in gallons per day, and the average daily pumpage, in gallons, of the proposed water system. Please verify that the proposed system will be able to meet maximum daily demand with its largest well and/or pump out of service in accordance with [83 IAC 600.230(a)].
- WD 1.13
- a. Please provide a copy of any permits issued by the Illinois Environmental Protection Agency for the construction/operation of the water system.
 - b. If a permit has not been issued by the Illinois Environmental Protection Agency for the construction/operation of the water system, please explain why not.
- WD 1.14 Please provide a statement describing whether there is a present and continuing need by the public in the area encompassed by the application for facilities and services of the type which applicant proposes to provide.
- WD 1.15 Please provide a statement evidencing that no existing agency, publicly or privately owned or operated, would or could economically and efficiently provide the facilities and services needed by the public in the area, which is the subject of the application.

- WD 1.16 The application for a certificate of convenience and necessity, section 7, states that the municipalities whose corporate boundaries lie within one half-mile of the area were served a copy of the petition. However, 83 IAC 200.150(b) states that municipalities that are located **partly** or wholly within one and one-half miles should be served a copy of the petition. Please advise whether 83 IAC 200.150(b) has been complied with. If it has not been complied with please do so and provide verification to Staff.
- WD 1.17 Please provide a copy of the list of municipalities provided to the Chief Clerk of the Illinois Commerce Commission. Such list allows the Commission to provide at least 10 days notice to the municipalities of the time and place of the first hearing [83 IAC 200.530 and 220 ILCS 5/10-108].
- WD 1.18 Please provide a breakdown, by acreage, of the current use of the total acreage for the area involved with this proceeding (e.g., residential, commercial, industrial, cropland, pastureland, forestland, and other).
- WD 1.19 Please provide the amount of acreage that may be removed from current use due to a permanent structure being installed, such as a meter vault to serve the area.
- WD 1.20 Please provide the amount of acreage that will be required for working easements during the construction of the different main extensions. Please provide the width of the working easements.
- WD 1.21 Please provide the amount of acreage that will be required for permanent easements. Please provide the width of the permanent easements.
- WD 1.22 Please describe the condition to which any easement will be restored upon completion of the construction of the main extension.
- WD 1.23 Has the applicant contacted the Illinois Historic Preservation Agency to determine if any of the proposed certificated area(s) has been identified as a historic or archaeological area [20 ILCS 3420 – Illinois State Agency Historic Resources Preservation Act]?
- WD 1.24 Has the applicant contacted the Illinois Department of Natural Resources and the U.S. Army Corps of Engineers to determine if any of the proposed certificated service area(s) has been identified as flood plain areas and/or wetlands [20 ILCS 830 - Interagency Wetland Policy Act of 1989, 615 ILCS 5 – Rivers, Lakes, and Streams Act, and CFR 401]?
- WD 1.25 If any of the proposed main extension(s) crosses through wetlands, please describe in detail how the water and sewer main extension(s) will be constructed through the wetlands.
- WD 1.26 Has the applicant contacted the Illinois Department of Transportation and/or the County Road Commissioners for permission to construct any proposed

main extension(s) on easements controlled by them?

WD 1.27 Please file a list containing the name and address of each owner of privately owned tracts of land upon which easements will be sought to construct facilities, as disclosed by the records of the tax collector of the county wherein such land is located [83 IAC 200.150(h)].

WD 1.28 Does Woodlawn intend to follow Part 300 of the 83 Ill. Adm. Code Rules as they pertain to this case? This should include assurance that Woodlawn will follow ICC rules, Part 300, regarding any needed easements and that Woodlawn will notify the record in a timely fashion, prior to a final Order in this docket of any new information regarding the need for easements.

Please file a copy of the informational packet that was sent to landowners to negotiate the acquisition of a land right-of-way easement with the Chief Clerk of the Illinois Commerce Commission. Such packet should consist of a brief description of the purpose of the project, type of facility proposed to be constructed, size of site or width of right-of-way being sought and, in the case of a transmission line, its expected origin and terminus points [83 IAC 300.20].

WD 1.29 Please provide copies of the water service agreements made with developers and/or property owners in the proposed certificated service area.

WD 1.30 What are the price range of lots and homes proposed for the development?

WD 1.31 a. Is the existing water system of the applicant currently subject to the Illinois Environmental Protection Agency's restrictive or critical list?

b. If yes, please provide the reasons for being placed on the list, indicate what corrections must be made to remove it from the list, and indicate what the Company's plans are for corrective action.

WD 1.32 Please provide a description and cost analysis of all routes considered from starting point to point of delivery for the proposed water distribution system. For the route chosen, please provide justification of why the route is the least cost alternative.

WD 1.33 Please provide a copy of the Agricultural Impact Mitigation Agreement entered into between the Company and the Illinois Department of Agriculture, in regard to extension of water lines [8 IAC 700, Appendix J, and 505 ILCS 75 – Farmland Preservation Act].

WD 1.34 Has the Company performed an Endangered Species Consultation Process with the Illinois Department of Natural Resources for the construction of the proposed main extension(s) [17 IAC 1075, 520 ILCS 10/11 – Illinois Endangered Species Protection Act, and 525 ILCS 30/17 – Illinois Natural

Areas Preservation Act]?

- WD 1.35 Please identify how much capacity is needed for the subdivision and how much excess capacity there will be. Please justify any excess capacity. (Identify well capacity, storage capacity, and treatment capacity separately.)
- WD 1.36 Please identify the number, type, and size of meters to be installed. Also provide the cost of each meter, by size, and meter installation cost by size.
- WD 1.37 Provide a calculation of the effect of refunding mains in accordance with 600.370 and what effect it would have on rates.
- WD 1.38 Please provide the qualifications of the proposed operator. Include a list of the systems they currently maintain and operate.