

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ROCKWELL UTILITIES, LLC)
)
Application for Approval of a Reorganization) No. 11-
Pursuant to Section 7-204 of the Illinois Public)
Utilities Act)

DIRECT TESTIMONY OF JOHN CARROLL

Manager, Rockwell Investments, LLC

On behalf of Rockwell Utilities, LLC

1 **I. WITNESS INTRODUCTION AND PURPOSE OF TESTIMONY**

2 **Q. Please state your name and your business address.**

3 A. My name is John Carroll, Manager of Rockwell Investments, LLC (“Rockwell
4 Investments” or “RI”). My business address is 201 Juniper Circle, Streamwood, Illinois
5 60107.

6 **Q. What is the purpose of your testimony?**

7 A. I am presenting testimony on behalf of Rockwell Utilities, LLC (“Rockwell Utilities” or
8 the “Company”), and will describe why the Illinois Commerce Commission
9 (“Commission”) should approve the proposed reorganization of the Company (the
10 “Reorganization”) pursuant to Section 7-204 of the Public Utilities Act (“Act”). 220
11 ILCS 5/7-204. Specifically, my testimony explains the reason for the Reorganization, the
12 structure of the transaction, and provides the requisite facts which demonstrate that the
13 Reorganization is in the public interest and meets the requirements of the Act.

14 **Q. Please describe your educational, professional and business background.**

15 A. I have more than 32 years of construction, real estate development and management
16 experience. My experience includes having responsibility for overseeing all construction
17 operations, utility installation and land development work related to real estate
18 development. More recently, my experience includes Manager of Rockwell Investments
19 LLC. I am completing my education in Civil Engineering from the University of Illinois.

20 **Q. What are your duties and responsibilities at Rockwell Utilities?**

21 A. I have overall responsibility for the operations of Rockwell Utilities as a result of my
22 previous employment with Kirk Corporation and have continued in this role since the

23 appointment of the bankruptcy trustee for Kirk. If the Reorganization is approved by the
24 Commission, I would continue in this role for Rockwell Investments.

25 **II. DESCRIPTION OF ROCKWELL UTILITIES AND THE PROPOSED**
26 **REORGANIZATION**

27
28 **Q. Please provide a brief description of Rockwell Utilities and its operations.**

29 A. The Commission certified Rockwell Utilities as a public utility on August 16, 2006, in
30 ICC Docket No. 06-0522. Rockwell Utilities provides water and sanitary sewer service
31 to nearly 700 residences in Lakemoor, Illinois. Its assets include a water treatment
32 facility, a one-million gallon elevated storage tank and approximately 13,745 linear feet
33 of mains. MGD Water Systems, Inc. (“MGD”) provides water and wastewater plant
34 operation assistance to Rockwell Utilities. Rockwell Utilities also uses the services of
35 LinTech Engineering from time to time to assist it with engineering, environmental
36 compliance and permitting issues. This arrangement will continue if the Reorganization
37 is approved by the Commission.

38 **Q. What prompted Rockwell Utilities’ Application in this proceeding?**

39 A. One hundred percent of the membership interest in Rockwell Utilities is owned by the
40 Kirk Corporation (“Kirk”). On May 12, 2009, Kirk and a number of its related entities
41 other than Rockwell Utilities filed for bankruptcy under Chapter 11. The cases were later
42 converted to Chapter 7 cases and the Trustee was appointed. Kirk and the other debtors
43 owed money to various banks, including JPMorgan Chase Bank, and part of the security
44 for the loans was Kirk’s membership interest in Rockwell Utilities. The bankruptcy
45 Trustee, Richard Fogel, and JP Morgan worked out a settlement to liquidate the collateral
46 of Kirk, and this settlement agreement was approved by the bankruptcy court on March
47 24, 2010. On September 24, 2010, the bankruptcy court entered an order approving the

48 Trustee's sale of the membership interest in Rockwell Utilities to Rockwell Investments
49 (Rockwell Ex. 1.1, attached hereto) pursuant to a Sale and Purchase of Membership
50 Interest Agreement. (Rockwell Ex. 1.2, attached hereto). The reorganization resulting
51 from the proposed sale is subject to the approval of the Commission. Should the
52 proposed transaction obtain all necessary approvals, Rockwell Investments will own one
53 hundred percent of the membership interest in Rockwell Utilities.

54 **Q. Would you please summarize your conclusions?**

55 A. In my opinion, the proposed Reorganization of Rockwell Utilities meets the requirements
56 of the Act and is in the public interest. Rockwell Utilities has and continues to provide
57 safe and reliable service to its customers. Unfortunately, the sole entity owning the
58 membership interest in the Company, Kirk, is in bankruptcy proceedings and seeks to sell
59 its membership interest to Rockwell Investments. Approving Rockwell Investments to
60 acquire the sole membership interest in Rockwell Utilities will result in the Company
61 having a financially viable owner. Prior to the Petition Date, the Company entered into
62 an agreement with Kirk dated December 16, 2005, entitled the "Operating Agreement of
63 Rockwell Utilities, LLC" (the "Operating Agreement")(Rockwell Ex. 1.3, attached
64 hereto). The Operating Agreement identifies Kirk as the member and manager of the
65 Company, and sets forth the obligations and responsibilities of Kirk and the Company
66 relative to the operation of the Company. If the Reorganization is approved by the
67 Commission, the Trustee will assign the rights of Kirk under the Operating Agreement to
68 Rockwell Investments. RI plans to operate Rockwell Utilities in the same, or better,
69 manner that it has been operated since first offering service. Thus, I believe that the
70 Reorganization is in the public interest and should be approved.

71 **III. DESCRIPTION OF HOW THE PROPOSED REORGANIZATION MEETS THE**
72 **REQUIREMENTS OF SECTION 7-204 OF THE ACT**

73 **Q. Earlier you testified that the proposed Reorganization meets the requirements of the**
74 **Act. Please explain.**

75 **A.** It is my understanding that the proposed Reorganization requires Commission approval
76 pursuant to Section 7-204 of the Act. The Commission must determine that the
77 Reorganization does not adversely affect the ability of the Company to perform its duties
78 under the Act. The following testimony presents facts and explains how the transaction
79 meets the specified criteria of Section 7-204(b).

80 **Q. Would you please explain how the proposed Reorganization will satisfy the**
81 **provisions of Section 7-204(b)(1).**

82 **A.** Section 7-204(b)(1) requires that the proposed transaction will not affect the Company's
83 ability to perform adequate, reliable, efficient, safe and least-cost public utility service.
84 Rockwell Utilities has been supplying water and sewer service to the residences in
85 Lakemoor, Illinois since January 2006. Subsequent to the approval of the proposed
86 Reorganization, all aspects of the utility service provided to present customers of
87 Rockwell Utilities will remain the same, except that Rockwell Investments will hold the
88 sole membership interest in the Company. As I describe later in my testimony, the effect
89 of the proposed Reorganization will be to provide the Company with a financially
90 stronger parent company. Further, Rockwell Investments plans on utilizing the same (or
91 similar) personnel that have assisted in operating Rockwell Utilities for the past 4 years.
92 This team has allowed Rockwell Utilities to provide safe, reliable and cost-effective
93 service to customers during this time. I am confident that this team will maintain such
94 service in the future.

95 Q. **Please explain how the proposed Reorganization will satisfy the provisions of**
96 **Section 7-204(b)(2).**

97 A. Section 7-204(b)(2) requires that the proposed transaction will not result in any
98 unjustified subsidization of non-utility activities by Rockwell Investments. Prior to its
99 bankruptcy filing, Kirk provided certain services to Rockwell Utilities under an “Affiliate
100 Service Agreement” (“the Service Agreement”) dated January 4, 2007. Under the
101 Service Agreement, Kirk provided, and Rockwell Utilities purchased, certain services,
102 including executive, secretarial, accounting, human resources, information systems, and
103 rates and revenue. After the bankruptcy filing, these services have not been provided by
104 Kirk. Instead, Rockwell Utilities has purchased these services directly from hourly,
105 independent contractors. If the Reorganization is approved, Rockwell Utilities proposes
106 to enter into a contract with Rockwell Investments with identical terms as the Service
107 Agreement (the “Proposed ASA”)(Rockwell Ex. 1.4, attached hereto).

108 Q. **Please explain how the proposed Reorganization will satisfy the provisions of**
109 **Section 7-204(b)(3).**

110 A. Section 7-204(b)(3) requires that costs and facilities are fairly and reasonably allocated
111 between utility and non-utility activities in such a manner that the Commission may
112 identify those costs and facilities which are properly included by the utility for
113 ratemaking purposes. Rockwell Utilities will not perform non-utility activities, and
114 therefore all of its costs and facilities will be included for ratemaking purposes.

115 Q. **Please explain how the proposed Reorganization will satisfy the provisions of**
116 **Section 7-204(b)(4).**

117 A. Section 7-204(b)(4) requires that the proposed transaction will not significantly impair
118 Rockwell Utilities' ability to raise the necessary capital on reasonable terms or to
119 maintain a reasonable capital structure. The effect of the sale in bankruptcy will be to
120 provide the Company with a financially stronger parent company, and this will improve
121 the Company's ability to raise necessary capital on reasonable terms. The sale of
122 Rockwell Utilities' membership interest is expressly conditioned upon Kirk's release of
123 any claims against Rockwell Utilities, and JP Morgan's release of claims against
124 Rockwell Utilities in connection with the credit agreement between JP Morgan Chase and
125 certain of the bankruptcy debtors.

126 **Q. Please explain how the proposed Reorganization will satisfy the provisions of**
127 **Section 7-204(b)(5).**

128 A. Section 7-204(b)(5) requires that the proposed transaction will not alter Rockwell
129 Utilities' obligation to remain subject to all applicable laws, regulations, rules, decisions
130 and policies governing the regulation of all Illinois public utilities. It does not; the
131 Company's obligation in this regard would be unchanged.

132 **Q. Please explain how the proposed Reorganization will satisfy the provisions of**
133 **Section 7-204(b)(6).**

134 A. Section 7-204(b)(6) requires that the proposed transaction is not likely to have a
135 significant adverse effect on competition in Illinois. I am unaware of any competition for
136 the services the Company provides customers. Accordingly, market conditions after
137 approval of the proposed Reorganization will be substantially the same as those currently
138 existing.

139 **Q. Please explain how the proposed Reorganization will satisfy the provisions of**
140 **Section 7-204(b)(7).**

141 A. Section 7-204(b)(7) requires that the proposed transaction is not likely to result in any
142 adverse rate impacts on retail customers of the Company. The proposed transaction will
143 not impose any new costs on Rockwell Utilities or its customers. The Company is not
144 seeking a rate increase as a result of the Reorganization, and proposes to continue
145 charging existing water and sewer rates. *See* Rockwell Ex. 1.5. To the extent that the
146 Company seeks a rate increase in the future, such a proposal will be based upon its costs
147 of service, not Reorganization-related costs.

148 **Q. Does Rockwell Utilities project that it will achieve any savings from the**
149 **Reorganization?**

150 A. No, it does not. Rather, the purpose of the Reorganization is to allow Rockwell
151 Investments to acquire the sole membership interest in the Company. However, to the
152 extent there are savings, such savings should be offset by the costs associated with the
153 transaction.

154 **Q. Does Rockwell Utilities project that it will incur any incremental costs as a result of**
155 **the approval and implementation of the Reorganization?**

156 A. I estimate that the costs of the proposed Reorganization allocable to the Company will be
157 \$55,000. (Ex. 1.6, attached hereto).

158 **Q. Is Rockwell Utilities seeking to recover the costs associated with the proposed**
159 **Reorganization?**

160 A. No, but as described previously, the Company would propose to offset any savings
161 associated with the Reorganization with the costs identified above.

162 **Q. Does this conclude your Direct Testimony?**

163 **A. Yes, it does.**