

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Corix Utilities (Illinois) LLC,)
Hydro Star, LLC and Utilities, Inc.,)
Each of the 23 Illinois Operating Subsidiaries)
of Utilities, Inc.))
) ICC Docket No. 12-0279
Joint Petition for Approval of Proposed)
Reorganization.)

**PEOPLE OF THE STATE OF ILLINOIS' MOTION TO COMPEL RESPONSES TO AG
DATA REQUESTS TO JOINT APPLICANTS**

The People of the State of Illinois (“the People”), through Illinois Attorney General Lisa Madigan (“AG”), pursuant to 83 Ill. Adm. Code 200.190, 200.340, 200.370, and 200.410(b), file this Motion to Compel Responses to AG Data Requests to Corix Utilities (Illinois) LLC, Hydro Star, LLC; Utilities Inc., each of the 23 Illinois Operating Subsidiaries of Utilities, Inc. (collectively “Joint Applicants”) as a result of Joint Applicants’ failure to provide responsive and complete responses to AG data requests, namely the production of full and complete financing agreements between Corix and any of Corix’s lenders. In support of this Motion, the People state as follows:

1. On August 9, 2012, the People served the companies with the AG’s Fourth Set of Data Requests on Rehearing, with a due date of August 16, 2012, reproduced in relevant part and attached herein as Attachment “A.” In particular, Data Request AG 4.2(b) stated: “Please provide the complete debt financing agreement.”

2. The Joint Applicants objected to the request to provide the complete debt financing agreement on the grounds that it was “overbroad, unduly burdensome, and does not appear to be calculated to obtain information relevant to the issues in this proceeding.” As detailed in the attached letter to Joint Applicants’ counsel, attached herein as Attachment “B,” AG counsel contacted Joint Applicants’ counsel via telephone conference and written correspondence on August 23, 2012, in an attempt to resolve the objections.

3. In response to the AG’s requests, Joint Applicants have provided portions of the debt financing agreement, but have not provided the entire agreement.

4. AG counsel has attempted to resolve this matter in good faith by communicating with counsel for the Joint Applicants regarding their failure to provide the complete and entire financing agreement. Counsel has responded by noting that the Joint Applicants are providing the “relevant” portions of the agreement.

5. Approval of the consummation of Joint Applicants’ requested transaction must be supported by information sufficient to allow the Commission to reach an informed decision. This information must also allow the People, and other intervening parties, the opportunity to analyze whether the transaction will “significantly impair the utility’s ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure.” 220 ILCS 5/7-204(b). 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. Adm. Code § 200.340.

6. Subject to certain exceptions (primarily privileges), a party seeking discovery in Illinois may obtain full disclosure of all matters relevant to the pending proceeding. *Mistler v. Mancini*, 111 Ill. App. 3d 228, 67 Ill. Dec. 1, 443 N.E.2d 1125 (2 Dist. 1982). The discovery process “presupposes a range of relevance and materiality which includes not only what is admissible at trial

but also that which leads to what is admissible at trial.” *Willing v. St. Joseph Hosp.*, 176 Ill. App. 3d 737, 126 Ill. Dec. 197, 531 N.E.2d 824 (1st Dist. 1988); *United Nuclear Corp. v. Energy Conversion Devices, Inc.*, 110 Ill. App. 3d 88, 65 Ill. Dec. 649, 441 N.E.2d 1163 (1st Dist. 1982) (Discovery includes not only what is admissible at trial, but also that which leads to what is admissible.).

7. The information requested by the People is calculated to lead to the discovery of relevant evidence and will enable the People to properly assess the effect of Joint Applicants’ acquisition of Utilities, Inc. on its financing needs and whether Utilities, Inc. will be properly “ring fenced” or protected from adverse effects associated with its parent. The People cannot further evaluate the degree to which Utilities, Inc. will be able to finance its operations independently of Corix without the complete and full debt financing agreement. Further, it is not possible for the People to fully understand the restrictions under which Utilities, Inc. might be required to operate if Joint Applicants do not disclose the entire agreement.

8. The Joint Applicants are, collectively, the only parties that can provide the information requested by the People. If the Joint Applicants are not required to provide this information, the Commission and the ALJ will be without relevant information that may assist them in reaching an informed and reasoned opinion as to whether the Joint Applicants’ proposed reorganization should be approved.

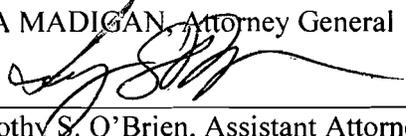
9. The Companies should be ordered to fully respond to AG Data Request 4.2(b) and provide a copy of the complete debt financing agreement described in AG Data request 4.2 (included as Attachment B to this Motion).

WHEREFORE, the People respectfully request that the Commission:

- A. Order the Companies to provide the full and complete debt financing agreement within 2 business days; and
- B. for such other and further relief as is equitable.

Respectfully submitted,

LISA MADIGAN, Attorney General

By: 

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October 1, 2012

Attachment A

Data Request to Corix:

AG 4.2Re: Project Atlantis Update, January 24, 2012 [REDACTED AS MATERIAL ASSERTED BY THE JOINT APPLICANTS AS HIGHLY CONFIDENTIAL]. Concerning this:

- a. Which financing option has Corix selected?
- b. Please provide the complete debt financing agreement. This was requested in AG 3.4, but the only document provided in the response thereto concerned the equity contribution from bcIMC; no documentation concerning the debt financing was provided.
- c. [REDACTED AS MATERIAL ASSERTED BY THE JOINT APPLICANTS AS HIGHLY CONFIDENTIAL].

RESPONSE:

- a. [RESPONSE TO (a) REDACTED AS MATERIAL ASSERTED BY THE JOINT APPLICANTS AS HIGHLY CONFIDENTIAL]
- b. Joint Applicants object to this request on the grounds that it is overbroad, unduly burdensome, and does not appear to be calculated to obtain information relevant to the issues in this proceeding. The response to AG 3.4 was provided solely for the purpose of demonstrating that Corix had secured financing to complete the acquisition and is not relevant to UI's cost of capital.
- c. [REDACTED AS MATERIAL ASSERTED BY THE JOINT APPLICANTS AS HIGHLY CONFIDENTIAL]

ATTACHMENT ~ B ~



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 23, 2012

W. Michael Seidel
Howard & Howard
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Chicago, Illinois 60604

RE: Corix Utilities (Illinois), LLC; Hydro Star, LLC, et. al., ICC Docket No. 12-0279

Dear Mr. Seidel,

As we discussed on the telephone today, the Office of the Attorney General seeks clarification regarding your client's responses to AG Data Requests 4.2(b) and 4.14 in the above docket (reproduced in relevant part at the end of this letter as Attachment 1). This letter represents an attempt pursuant to Commission Rule 200.340 to resolve a conflict.

In response to your concerns, and to clarify AG Data Request 4.2(b), this office is requesting a copy of any and all debt financing agreements relative to Corix's acquisition of UI and its integration of UI, and potentially, of other utilities. You indicated that such a financing agreement exists but that AG Data Request 4.2(b) did not describe it to your satisfaction due to its reference to another Data Request. Please let this letter modify AG Data request 4.2(b) to eliminate the reference to AG Data Request 3.4, and to clarify that we are requesting a copy of the complete financing agreement between Corix's lenders and Corix relative to the acquisition of UI. A review of this agreement is necessary for this office to investigate to what extent the proposed reorganization will impact the debt structure of Utilities Inc. and Corix; and whether the proposed reorganization will affect Utilities Inc.'s ability to provide necessary water service to its customers at reasonable and just rates. As you know, pursuant to section 7-204 of the Public Utilities Act, the Commission must find, in relevant part, that:

- (1) the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service;

(2) the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the utility or its customers;

(3) costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes;

(4) the proposed reorganization will not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure; and

(7) the proposed reorganization is not likely to result in any adverse rate impacts on retail customers.

220 ILCS 5/7-204. The Commission is obligated under the law to address each of these factors in its Order regarding the reorganization.

In response to AG Data Request 4.14(u) and (v), your client raises several objections. In response to subsection (u), your client objects because the question refers to activities that are “not reasonably certain to occur.” If Corix is not acquiring other operations or utilities, we are entitled to know this. Conversely, if there are other utility acquisitions pending that may affect UI customers, we are also entitled to know that. Please confirm that either: (1) there are no acquisitions other than UI planned or pending by Corix or (2) identify these other planned or pending acquisitions. The objection that an acquisition is not “reasonably certain to occur” is very broad and could include the pending UI acquisition, due to the ongoing approval process in various states.

Please accept this letter as an amendment to AG Data Request 4.14(u) that Corix and Joint Applicants either (1) confirm that Corix has no acquisitions other than UI pending or (2) report each pending Corix acquisition in addition to UI, including location, current status, estimated closing data, the names of each regulated utility business that would be acquired in each transaction, and the names and types of unregulated businesses that would be acquired in each transaction.

The response to AG Data Request 4.14 (v) refers to the response provided to AG Data Request 4.9. This data request asks for “the method by which the assets and/or operations of these other companies would be consolidated, managed, and/or operated in conjunction with Utilities Inc.’s assets and operations, and provide all documents estimating the synergy savings from such combinations.” We understand your response to mean that there are no acquisition or integration plans other than the Integration Plan previously provided in the HSR documents. If this understanding is correct, no further clarification is needed.

Finally, in a letter from this office to you dated August 1, 2012, this office requested that you provide a physical or electronic copy of the Hart Scott Rodino Act filing to this office and our witness, Mr. Rubin. Although Mr. Rubin received a physical copy of these documents, to date, this office has not. As there is no dispute that we are entitled to see the same documents

that you have provided to our witness, subject to confidentiality restrictions, please deliver a copy of these documents to me either electronically or in physical form at the address below no later than close of business Friday, August 24.

Thank you for your attention to these matters.

Sincerely,



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Attachment

cc: Michael Lannon, ICC Staff Counsel
Thomas Stanton, ICC Staff Counsel
Janice Dale, Public Utilities Bureau Chief
Mr. Scott Rubin