

BEFORE THE
ILLINOIS COMMERCE COMMISSION

Corix Utilities (Illinois) LLC :
Hydro Star, LLC :
Utilities, Inc. :
Each of the 23 Illinois Operating Subsidiaries of :
Utilities, Inc. :
:
Joint Application for Approval of Proposed :
Reorganization :

Docket No. 12-0279

Rebuttal Testimony of
Scott J. Rubin

REDACTED

on Behalf of
the People of the State of Illinois

AG Exhibit 2.0

October 2, 2012

Introduction

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Q. Please state your name.

A. My name is Scott J. Rubin. I previously filed direct testimony in this proceeding (AG Ex. 1.0).

Q. What is the purpose of your rebuttal testimony?

A. I will respond to various statements made in the rebuttal testimony filed by Mr. Lubertozzi on behalf of Utilities Inc. ("UI") and Mr. Cumming on behalf of Corix.

Q. Did either Mr. Lubertozzi or Mr. Cumming provide any information in their rebuttal that you had not seen before or that you had not taken into account when you prepared your direct testimony?

A. No. I was well aware of the information highlighted by those witnesses when I prepared my direct testimony.

Q. Does anything contained in the Joint Applicants' rebuttal testimony change your findings, conclusions, or recommendations?

A. No.

Q. Mr. Cumming claims that any synergy savings from the proposed transaction are unknown and speculative. Do you agree?

A. No, I do not. As I documented in my direct testimony, Corix has identified substantial synergy savings from the proposed transaction. Estimates of those savings have been prepared for specific categories of expenditures. While the precise numbers will not be known until near the time of closing, Corix's internal documents state in some detail that it is entering into this transaction with the expectation of achieving substantial savings.

23 **Q. Mr. Cumming claims that the document you relied upon was never adopted by**
24 **Corix management or relied upon by them in deciding whether to enter into the**
25 **transaction. How do you respond?**

26 **A.** Mr. Cumming is being very careful with the words he chooses. The documents I quoted
27 in my direct testimony identify the savings. That estimate of savings was presented at a
28 Special Board Meeting of Corix on February 2, 2012. The minutes from that meeting
29 contains the following summary:

30 **{Begin Highly Confidential**

31 A large rectangular area of the document is completely redacted with a solid black box, covering approximately 10 lines of text.

39 **End Highly Confidential}**

40 **Q. Mr. Cumming claims that the board did not rely on this synergies estimate in**
41 **making its decision. Do you disagree?**

42 **A.** Once again, I think Mr. Cumming is being very careful with his wording. The minutes
43 do not disclose the reasons why any member of the board decided to go ahead with the
44 transaction. The minutes contain a discussion of the synergies, including a life-cycle
45 valuation of the synergies, that was presented by a member of the board. The board then
46 voted to go forward with the transaction and authorized the officers to bid up to a
47 maximum amount for UI. There is no doubt that the board had information about

48 synergy savings before it, but no one can say how that information affected the vote of
49 any particular board member.

50 In addition, the minutes disclose that two representatives of Corix's largest
51 shareholder, bcIMC, were present at the meeting. Recall that bcIMC is providing a
52 substantial equity contribution to Corix that will be used to pay a substantial portion of
53 the purchase price to UI. The minutes disclose that bcIMC considered the estimated
54 synergy savings in its valuation and in making the decision to go forward with a
55 substantial equity investment. Specifically, the minutes of the February 2, 2012, meeting
56 state:

57 **{Begin Highly Confidential**

58 [REDACTED]
59 [REDACTED]
60 [REDACTED]
61 [REDACTED]
62 [REDACTED]
63 [REDACTED]

64 **End Highly Confidential}**

65 **Q. Was Mr. Cumming aware of bcIMC's reliance on the synergies estimate?**

66 **A.** Yes. Mr. Cumming was present at the board meeting. In addition, he responded to a
67 discovery request that specifically highlighted this statement from the minutes (AG 5.3).

68 **Q. Mr. Cumming states that there is no certainty that any synergies will be realized.**

69 **Do you agree?**

70 **A.** No, I do not agree. The documents quoted in my direct testimony identify substantial
71 savings in taxes and interest costs. Those savings will exist without making any changes

72 in UI's operations or personnel. As it stands now, Corix proposes to retain 100% of those
73 savings and share none of them with UI's customers.

74 In addition, I assume that Corix is a rational business enterprise and that its
75 management is prudent. Corix has identified substantial additional savings from making
76 the changes I identified in my direct testimony. Corix presented those savings estimates
77 to its board of directors and largest equity investor before the board and the investor
78 decided to go forward with the transaction. It would be irresponsible and irrational,
79 indeed it might even be breach of the board's fiduciary duty, for Corix to fail to attempt
80 to achieve those types of savings.

81 **Q. Mr. Lubertozi and Mr. Cumming both state that there will be "no duplication of**
82 **functions" as a result of the transaction. Is this correct?**

83 A. No, this cannot be correct. UI is in the business of owning and operating water and *
84 wastewater utilities. Corix also has businesses that own and operate water and
85 wastewater utilities, and it is in the process of acquiring more such businesses. Both
86 companies have officers, managers, lawyers, accountants, engineers, computer analysts,
87 customer service representatives, computer systems, and all of the other people and
88 facilities needed to operate water and wastewater utilities. There is no question that there
89 is duplication. What we don't know – because Corix has not shared its actual plans – is
90 how Corix plans to evaluate and minimize the extent of the duplication. As I have
91 demonstrated, internal Corix documents have identified the potential for substantial
92 savings because of that duplication. It simply is not credible for the witnesses to state
93 that there is no duplication of functions and no savings can be expected.

94 **Q. There is a significant amount of testimony by both witnesses concerning the extent**
95 **to which UI is ring fenced. Does any of this testimony present information that is**
96 **new to you, or does any of it change your opinion?**

97 A. No. The information discussed by the witnesses was included in the excerpts of the
98 financing agreements that were provided during discovery. The information does not
99 change my opinion.

100 **Q. In conclusion, does anything in the Joint Applicants' rebuttal change your**
101 **conclusions and recommendations?**

102 A. No.

103 **Q. Does this conclude your rebuttal testimony?**

104 A. Yes.