

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF CORIX UTILITIES)
(ILLINOIS) LLC; HYDRO STAR, LLC; UTILITIES,)
INC.; AND WATER SERVICE CORPORATION OF) CASE NO. 2012-00133
KENTUCKY FOR THE TRANSFER AND)
ACQUISITION OF CONTROL PURSUANT TO KRS)
278.020

ORDER REGARDING REQUEST FOR CONFIDENTIAL TREATMENT

On July 12, 2012, Corix Utilities (Illinois) LLC; Hydro Star, LLC; Utilities, Inc.; and Water Service Corporation of Kentucky (“Petitioners”) petitioned pursuant to 807 KAR 5:001, Section 13,¹ that certain of its responses to the Attorney General’s (“AG”) Supplemental Request for Information be afforded confidential treatment and not be placed in the public record subject to public inspection. The materials in question were Movant’s Responses to AG Supplemental Requests 2-4, 2-5, 2-6, and 2-12(i) and (ii).

In support of their petition, Petitioners state that the materials sought in AG Supplemental Requests 2-4, 2-5, and 2-6 are materials derived from Hart-Scott-Rodino Act filings and that federal law prohibits the disclosure of Hart-Scott-Rodino Act filings.² KRS 61.878(1)(k) exempts from disclosure “all public records or information the disclosure of which is prohibited by federal law or regulation.” As to the material sought in AG Supplemental Requests 2-12(i) and (ii) – Corix Group’s Scorecard and Corix

¹ Petitioners made their petition pursuant 807 KAR 5:001, Section 7. Since the filing of this petition, the Commission has promulgated revisions to 807 KAR 5:001. The section of the Commission’s Rules of Procedure pertaining to confidential treatment of records is now found at Section 13.

² 15 U.S.C. § 18a(h); 16 C.F.R. § 803.1(b).

Infrastructure, Inc.'s Code of Conduct, Petitioners state that these materials are records generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to its competitors, and are exempted from public inspection pursuant to KRS 61.878(1)(c)(1).

Having carefully considered the petition and the materials at issue, the Commission finds that:

1. The materials submitted in response to AG Supplemental Requests 2-4, 2-5, and 2-6 meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1)(k) and 807 KAR 5:001, Section 13. These materials should not be placed in the public record or made available for public inspection until further Order of the Commission.

2. The material submitted in response to AG Supplemental Request 2-12(i) – Corix Group's Scorecard – meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. This material should not be placed in the public record or made available for public inspection until further Order of the Commission.

3. Petitioners have failed to demonstrate that the material submitted in in response to AG Supplemental Request 2-12(i) – Corix Group's Code of Conduct – meets the criteria for confidential treatment.³ It has failed to explain how release of this material will present an unfair commercial advantage to Petitioners' competitors. Moreover, it is not evident from review of the document how an unfair commercial advantage would be created.

³ The burden is on the party opposing disclosure to establish that a record is exempt from release. See *Com., Cabinet for Health and Family Services v. Lexington H-L Services, Inc.*, 382 S.W.3d 875 (Ky.App. 2012); *Medley v. Bd. of Education of Shelby County*, 168 S.W.3d 398 (Ky.App. 2005).

IT IS THEREFORE ORDERED that:

1. Petitioners' petition for confidential protection is granted in part and denied in part.

2. The materials submitted in response to AG Supplemental Requests 2-4, 2-5, 2-6, and 2-12(i) are granted confidential treatment and shall not be placed in the public record nor made available for public inspection until further Order of the Commission.

3. Petitioners shall inform the Commission if any of the materials submitted in response to AG Supplemental Requests 2-4, 2-5, 2-6 or 2-12(i) become publicly available or no longer qualify for confidential treatment.

4. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order, the Petitioners shall have 20 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Petitioners are unable to make such demonstration, the requested materials shall be made available for inspection.

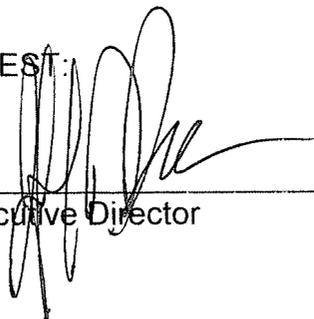
5. Petitioners' petition for confidential protection for the materials in response to AG Supplemental Request 2-12(ii) is denied.

6. The materials in Item 2-12(ii) of Petitioners' Response to AG Supplement Request for Information shall not be placed in the public record for 23 days following the date of this Order to allow Petitioners to seek any remedy afforded by law.

By the Commission

ENTERED 
APR 25 2013
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2012-00133

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