

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

Joint Application of Corix Utilities (Illinois) )  
LLC; Hydro Star, LLC; Utilities, Inc.; ) Case No. 2012-00133  
and Water Service Corporation of Kentucky )  
for the Transfer and Acquisition )  
of Control Pursuant to KRS 278.020 )

**PETITION FOR CONFIDENTIALITY**

Corix Utilities (Illinois) LLC (“Corix Utilities”); Hydro Star, LLC (“Hydro Star”); Utilities, Inc. (“UP”); and its Kentucky utility subsidiary, Water Service Corporation of Kentucky (“WSCK”) (collectively “Applicants”), pursuant to 807 KAR 5:001, Section 7, respectfully request the Public Service Commission to grant confidential protection to certain information provided by the Applicants in response to the Attorney General’s first set of information requests in this proceeding. The information for which confidential protection is sought is contained in the following documents: (1) Tax Allocation Agreement and amendment thereto, (2) the Hart-Scott-Rodino (“HSR”) Act filings and notice, (3) Consolidated Financial Statements of Corix Infrastructure, Inc., and (4) a spreadsheet showing the amount and percentage of Corix Infrastructure, Inc.’s net earnings attributable to its operations within the United States, and (5) a spreadsheet showing certain costs anticipated to be incurred by Utilities, Inc., that would not have otherwise been incurred but for the transfer of control. In support of this request, Applicants state as follows:

Administrative Regulation 807 KAR 5:001, Section 7(2) sets forth a procedure by which certain information filed with the Commission shall be treated as confidential. Specifically, the party seeking confidential treatment must set “forth specific grounds pursuant to KRS 61.870 et seq., the Kentucky Open Records Act, upon which the commission should classify that material as confidential.” 807 KAR 5:001, Section 7(2)(a)(1). The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(1)(c)(1) exempts from disclosure:

Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records.

This exception “is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage.” Ky. OAG 97-ORD-66 at 10 (Apr. 22, 2008).

The information contained each of the documents is undoubtedly confidential and proprietary. The information is not publicly known and has not been disseminated except to those persons with a legitimate business who need to know and act on the information. In addition, if this information is disclosed, it would present an unfair commercial advantage to the Applicants’ competitors. For example, disclosure of this information would permit a competitor to glean sensitive financial information about Corix Infrastructure and its subsidiaries, including asset values, long-term debt, convertible debentures, authorized share capital, related party transactions, and acquisition costs. This type of information is generally not available in the market, and competitors do not freely disclose this information to each other. Disclosure of this information could potentially increase costs of doing business. As such, these documents should

be granted confidential treatment. *See* Case No. 2005-00433, *Nuon Global Solution USA, BV*, at 6 (Ky. PSC Apr. 3, 2006); *see also* Ky. OAG 09-ORD-031 at 9 (Feb. 16, 2009).

The Supreme Court of Kentucky has afforded confidential treatment for similar documents. In *Marina Mgmt. Serv. Inc. v. Commonwealth*, 906 S.W.2d 318 (Ky. 1995), the Court considered whether a public agency should disclose the audited financial reports of a privately owned corporation. The Court found:

The records submitted to the Parks Department include information on asset values, notes payable, rental amounts on houseboats, related party transactions, profit margins, net earnings, and capital income. These are records of privately owned marina operators, disclosure of which would unfairly advantage competing operators. The most obvious disadvantage may be the ability to ascertain the economic status of the entities without the hurdles systematically associated with acquisition of such information about privately owned organizations. Further, the facts on the record indicate that the audit statements were disclosed confidentially to Tourism and the Auditor's Office. On these facts alone, the exemption clearly applies.

*Id.* at 319. In the present case, the Applicants are providing the Commission with similar information as what was determined to be confidential in *Marina Management Services*. As stated by the Court in another case, “[i]t does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is generally recognized as confidential or proprietary . . . .” *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995). Accordingly, (1) the Tax Allocation Agreement, (2) the Hart-Scott-Rodino (“HSR”) Act filings and notice, (3) Consolidated Financial Statements of Corix Infrastructure, Inc., and (4) a spreadsheet showing the amount and percentage of Corix Infrastructure, Inc.’s net earnings attributable to its operations within the United States, and (5) a spreadsheet showing certain costs anticipated to be incurred by Utilities, Inc., that would not have otherwise been incurred but for the transfer of control should be granted confidential treatment by the

Commission.

In addition to paragraph (c) of KRS 61.878(1), paragraph (k) exempts from disclosure “all public records or information the disclosure of which is prohibited by federal law or regulation.” Federal law prohibits disclosure of the HSR Act filings. *See* 15 U.S.C. § 18a(h); *see also* 16 C.F.R. § 803.1(b). The Commission has previously ruled that the entire HSR filing should be granted confidential treatment. *See, e.g.,* Case No. 2011-00124, *Duke Energy Corp., et al.*, at 4 (Ky. PSC Dec. 5, 2011).

In accordance with the provisions of the Commission’s Order dated April 16, 2012, the Applicants shall file an original in paper medium and one copy of the petition. Because the Applicants seek blanket protection for all information contained in these documents, no redacted documents are being attached hereto. The Applicants will also file one copy of each of the documents, under seal, in unredacted format and a CD-ROM containing an electronic version of the same. The Applicants will make these documents available to the Attorney General pursuant to the Confidentiality Agreement.

WHEREFORE, the Applicants respectfully request that the Commission grant confidential protection for information contained in (1) the Tax Allocation Agreement and amendment thereto, (2) the Hart-Scott-Rodino (“HSR”) Act filings and notice, (3) Consolidated Financial Statements of Corix Infrastructure, Inc., and (4) a spreadsheet showing the amount and percentage of Corix Infrastructure, Inc.’s net earnings attributable to its operations within the United States, and (5) a spreadsheet showing certain costs anticipated to be incurred by Utilities, Inc., that would not have otherwise been incurred but for the transfer of control, or in the alternative, schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that the electronic version of the filing is a true and accurate copy of each document filed in paper medium and the electronic version of the filing has been transmitted to the Commission. Upon electronic filing, the Commission and other parties are notified that the electronic version has been transmitted to the Commission. No parties have been excused from participation by electronic means.



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