

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

CRAIG AVERY, STEVE BAUM,)
RAJIV BAZAJ, JENNY BIESE,)
MICHAEL BOTTGER, BRIAN BOWE,)
LINDSAY BRUNER,)
RONNIE CARDWELL, LEONARDO CARO,)
MICHAEL CAULFIELD, BLAIR CHANCEY,)
ANGELA CONNOR, JAMIE COTE,)
TIMOTHY DOBRATZ, THEODORE FRITZ,)
GREG GEBHARDT, ANN GLOSNY,)
TARA GORING, HOLLY HANSEN,)
SUSAN HERRMANN, ANDREW HESS,)
JEFFREY JOHNSON,)
ERIK JONES, KELLY KAISER,)
CHRISTINA KLUNK, BARRY KOSKI,)
MELISSA LAUDERDALE,)
KATHY LE CLOUX, KELLY LIEBMANN,)
AARON MATTHEWS, TIMOTHY MATTSON,)
TEAGUE MAXFIELD, MICHAEL MCGINN,)
LISA MESSERSCHMIDT, BRIAN MILES,)
JAMES MILLER, JULIE MILLER,)
BONNIE MONSON, LARRY NAILLON,)
JOHN O'CONNELL, BRIAN ONESTI,)
SCOT PERRY, DAVID PFEIFER,)
ALISON QUIGG, STACEY RAMGOLAM,)
TOM REIDER, AARON ROSKOSKI,)
SHARON ROSKOWSKI, MARK RUNDLE,)
JOSEPH SCHNEIDER,)
PATRICK SELSMEYER, KURT SPAETH,)
JODY SPAETH, RICHARD SPILKY,)
MATTHEW STASCH, MICHAEL STEVENS,)
JOHN SULJA, TIFFANI TERRACINA,)
KARIE THEUNIS, ERIC TREWARTHA,)
GALO VERA BORJA, JEREMY WADZINSKI,)
JOANNE WEYCKER, LAURIE WORK, and)
KIRSTEN YOUNG,)

Plaintiffs,)

v.)

INTEGRYS ENERGY GROUP, INC.,)

Defendant.)

2015CH04078
CALENDAR/ROOM 10
TIME 00:00
Declaratory Judgment

Case No.

COMPLAINT FOR DECLARATORY JUDGMENT

Now come the plaintiffs, CRAIG AVERY, STEVE BAUM, RAJIV BAZAJ, JENNY BIESE, MICHAEL BOTTGER, BRIAN BOWE, LINDSAY BRUNER, RONNIE CARDWELL, LEONARDO CARO, MICHAEL CAULFIELD, BLAIR CHANCEY, ANGELA CONNOR, JAMIE COTE, TIMOTHY DOBRATZ, THEODORE FRITZ, GREG GEBHARDT, ANN GLOSNY, TARA GORING, HOLLY HANSEN, SUSAN HERRMANN, ANDREW HESS, JEFFREY JOHNSON, ERIK JONES, KELLY KAISER, CHRISTINA KLUNK, BARRY KOSKI, MELISSA LAUDERDALE, KATHY LE CLOUX, KELLY LIEBMANN, AARON MATTHEWS, TIMOTHY MATTSON, TEAGUE MAXFIELD, MICHAEL MCGINN, LISA MESSERSCHMIDT, BRIAN MILES, JAMES MILLER, JULIE MILLER, BONNIE MONSON, LARRY NAILLON, JOHN O'CONNELL, BRIAN ONESTI, SCOT PERRY, DAVID PFEIFER, ALISON QUIGG, STACEY RAMGOLAM, TOM REIDER, AARON ROSKOSKI, SHARON ROSKOWSKI, MARK RUNDLE, JOSEPH SCHNEIDER, PATRICK SELSMEYER, KURT SPAETH, JODY SPAETH, RICHARD SPILKY, MATTHEW STASCH, MICHAEL STEVENS, JOHN SULJA, TIFFANI TERRACINA, KARIE THEUNIS, ERIC TREWARTHA, GALO VERA BORJA, JEREMY WADZINSKI, JOANNE WEYCKER, LAURIE WORK, and KIRSTEN YOUNG (collectively "Plaintiffs"), by their attorneys, MARK D. DEBOFSKY, MARIE E. CASCIARI, and DEBOFSKY & ASSOCIATES, P.C., and complaining against the defendant, INTEGRYS ENERGY GROUP, INC. ("Defendant" or "IEG"), state as follows:

NATURE OF ACTION

1. This action seeks declaratory relief determining and then declaring that Restricted Stock Unit ("RSU") awards offered to Plaintiffs by Defendant pursuant to the Integrys Energy

Group, Inc. 2010 Omnibus Incentive Compensation Plan (“Plan”) (a copy of which is attached hereto, and by that reference incorporated herein, as “Exhibit A”) either vested upon the sale of Integrys Energy Services, Inc. to Exelon Corporation on November 1, 2014, or, alternatively, will vest upon the consummation of a merger between Defendant and Wisconsin Energy Corporation (“WEC”) scheduled to be completed later in 2015. The RSU awards at issue are documented in the Integrys Energy Group, Inc. 2010 Omnibus Incentive Compensation Plan Restricted Stock Unit Agreement (“Agreement”) (a copy of which is attached hereto, and by that reference incorporated herein, as “Exhibit B”). The Agreement is governed by the terms and conditions of the Plan. (Exhibit B at pp. 7-8).

JURISDICTION AND VENUE

2. A substantial number of the events, transactions, and occurrences leading to Plaintiffs’ joint action for declaratory relief occurred in Cook County, Illinois. Defendant is headquartered in the City of Chicago, in Cook County, Illinois, does business in Cook County, Illinois, and at all times relevant hereto, Defendant employed many of the Plaintiffs in its offices located in Cook County, Illinois.

3. In addition, Section 20 of the Plan provides:

The Plan and all actions taken hereunder shall be governed by, and the Plan shall be construed in accordance with the laws of the State of Illinois without regard to the principle of conflict of laws. As a condition of receiving benefits pursuant to any Plan Award, a Participant agrees, on behalf of that Participant and all persons or entities that may claim through the Participant, that (1) any legal action or other legal proceeding concerning the Plan or a Plan Award may only be heard in a ‘bench’ trial, and (2) any right to a jury trial is waived.

(Exhibit A, Section 20 at p. 40). The Agreement similarly states:

This Agreement shall be governed by the internal laws of the State of Illinois, without regard to the principle of conflict of laws, as to all matters, including, but not limited to, matters of validity, construction, effect, performance and remedies...Any such action or proceeding must be commenced and prosecuted in

its entirety in the federal or state court having jurisdiction over Brown County, Wisconsin or Cook County, Illinois, and each individual with any interest hereunder agrees to submit to the personal jurisdiction thereof, and agrees not to raise the objection that such courts are not a convenient forum. Such action or other legal proceeding shall be heard pursuant to a bench trial, and the parties to such proceeding shall waive their rights to trial by jury.

(Exhibit B at p. 7).

PARTIES

4. Plaintiffs were all long-time employees of Integrys Energy Services, Inc. (“IES”). Until November 1, 2014, IES was a wholly owned subsidiary of Defendant. On November 1, 2014, IES was sold to Exelon Corporation (“Exelon”), which is also headquartered in Cook County, Illinois.

5. At all times relevant hereto, Defendant is and was a holding company for six to eight wholly owned subsidiary organizations, including IES. Defendant is the sponsor of the Plan.

STATEMENT OF FACTS

6. Defendant adopted the Plan on April 15, 2010. The Plan was approved by the Integrys board and became effective on May 13, 2010. The Plan recites that it was designed

[T]o promote the interests of the Company and its shareholders by (a) attracting and retaining executives and other key employees and directors of outstanding training, experience and ability; (b) motivating them, by means of performance-related incentives, to achieve performance goals; and (c) enabling them to participate in the growth and financial success of the Company. It is intended that this purpose be effected via performance-based incentives and through awards or grants of stock options and various other rights with respect to shares of the Company’s common stock, as provided herein, to such eligible employees and directors.

(Exhibit A at p. 1).

7. Following the adoption of the Plan, each year through February 2014, Plaintiffs were each “granted a Restricted Stock Unit (‘RSU’) award with respect to the shares of common

stock of Integrys Energy Group, Inc. (the 'Company') under the Integrys Energy Group, Inc. 2010 Omnibus Incentive Compensation Plan (the 'Plan')." (Exhibit B at p. 1).

8. The Agreement recited, "Twenty-five percent (25%) of your RSUs will vest on each of the first four anniversaries of the Grant Date (each, a 'Vesting Date'), provided that you are continuously employed by the Company or an Affiliate from the Grant Date through such Vesting Date." (Exhibit B at p. 1).

9. The Agreement also provided for the following exception to the above-described vesting schedule which would immediately vest all outstanding RSUs granted to Plan participants:

In general, any RSUs that have not previously been forfeited will become fully vested, even if not otherwise vested in accordance with the vesting schedule above; if (1) a Change in Control (as defined in the Plan) has occurred and (2) your employment with the Company and its Affiliates has been involuntarily terminated for any reason other than Cause...within two years following the date of the Change in Control. The vesting of your RSUs following a Change in Control will be governed by the terms of the Plan. Upon any other termination of employment or service, you will forfeit the RSUs that have not yet vested...

In the case of any termination of your employment or service in which you have vested RSUs (other than as a result of disability or death), the date that would have been the latest Vesting Date applicable to any of the RSUs if you had remained continuously employed by the Company or an Affiliate from the Grant Date through the Vesting Date (but not sooner than six (6) months from the termination of your employment or service); provided, that distribution of all vested RSUs shall be made six (6) months following termination of your employment or service, if such termination occurs within two (2) years following the occurrence of a "change in control event" within the meaning of Internal Revenue Code Section 409A...

For purposes of this Agreement, your employment or service will be terminated if the Committee determines that you have incurred a "separation from service" as such term is defined for purposes of Section 409A of the Internal Revenue Code.

(Exhibit B at pp. 3-4).

10. The Plan defines "Change in Control," in relevant part, as follows:

[A]ny merger of Integrys Energy Group, Inc. or share exchange involving Integrys Energy Group, Inc. in which Integrys Energy Group, Inc. is not the continuing or surviving corporation...If a Plan Award is considered deferred compensation subject to the provisions of Code Section 409A, and if a payment under such Plan Award would be accelerated or otherwise triggered upon a "change in control," then the foregoing definition is modified, to the extent necessary to avoid the imposition of an excise tax under Section 409A, to mean a "change in control event" as such term is defined for purposes of Code Section 409A...

Further, the provisions of Code Section 409A are incorporated into the Plan by reference to the extent necessary for any Plan Award that is subject to Code Section 409A to comply with such requirements, and except as otherwise determined by the Committee, the Plan shall be administered in accordance with Section 409A as if the requirements of Code Section 409A were set forth herein.

(Exhibit A at pp. 4-5, 38).

11. The Plan defines "Separation from Service," in relevant part, as follows:

For purposes of any Plan Award that is subject to Code Section 409A and with respect to which the terms and conditions of the Plan Award, as determined by the Committee (or if applicable, elected by the Participant) at the time of grant provide for distribution or settlement of the Plan Award upon the Participant's termination of employment, the Participant will be deemed to have terminated employment on the date on which the Participant incurs a "separation from service" within the meaning of Code Section 409A, and to the extent required in order to comply with Code Section 409A, no distribution or settlement of the Plan Award shall be made until the date that is six months and one day following the date of the Participant's "separation from service[.]" A Participant's "separation from service" shall occur when the Company reasonably anticipates no further services will be performed by the Participant for the Company after a certain date...For purposes of this definition, the term "Company" includes each other corporation, trade or business that, with Integrys Energy Group, Inc., constitutes a controlled group of corporations or group of trades or businesses under common control within the meaning of Code Sections 414(b) or (c).

(Exhibit A at pp. 28-29).

12. In the event of a "Change in Control," the Plan allows the successor to either continue the Plan benefits or provide a substitute benefit, but if the successor takes no such action, the plan provides:

(2) If the successor or purchaser in the Change in Control transaction does not assume the Plan Awards or issue replacement awards that are effective upon the Change in Control as provided in subsection (b)(1), then immediately prior to the Change in Control...

(B) each [] Plan Award...that is then held by a Participant who is employed by or in the service of the Company or a Subsidiary, and that is not then vested:

(i) shall become fully vested as of the date of the Change in Control, if vesting is based solely upon length of the employment relationship...provided that a Plan Award that relates to a Performance Period that was completed prior to the date of the Change in Control shall be paid in full in accordance with the terms of the Plan Award;

(ii) any restrictions or other conditions applicable to the Plan Award shall lapse as of the date of the Change in Control, and such Plan Award shall become free of all restrictions and conditions; and

(iii) such Plan Award shall be immediately paid to the Participant as of the date of the Change in Control.

(Exhibit A at pp. 33-36).

13. In December 2013, Defendant began negotiating a merger with Wisconsin Energy Corporation ("WEC"), which contemplated a sale of all of Defendant's assets to WEC with the exception of IES which was to be spun off in a separate transaction.

14. On June 22, 2014, IEG and WEC concluded their negotiations and entered into a definitive Agreement and Plan of Merger (a copy of the relevant provisions of which are attached hereto, and by that reference incorporated herein, as "Exhibit C"). The Agreement and Plan of Merger contained an explicit requirement that IEG first divest itself of IES, and prohibited IEG from terminating and/or interfering with the sale of IES. (Exhibit C at pp. 50-55). The combined company is to be called WEC Energy Group, Inc., and is anticipated to close in the second half of 2015 subject to regulatory approval, including approval by the Federal Energy Regulatory Commission which acknowledged in a regulatory communication that "the

deal also contained an explicit requirement to have Integrys divest itself of Integrys Energy Services ...prior to the merger.”

15. In accordance with the requirements and stipulations of the merger agreement, on July 29, 2014, Defendant entered into a definitive agreement with Exelon Corporation, documented in a United States Securities and Exchange Commission Form 8-K (a copy of which is attached hereto, and by that reference incorporated herein, as “Exhibit D”), pursuant to which Defendant “agreed to sell its competitive retail electric and natural gas businesses through a sale of all of the stock of its wholly-owned subsidiary, Integrys Energy Services, Inc. (“IES”), to Exelon.” (Exhibit D at p. 2). The sale of IES to Exelon closed on November 1, 2014.

16. The merger between IEG and WEC constitutes a “Change in Control” as that term is defined by the Plan, as it will result in a “merger of Integrys Energy Group, Inc. or share exchange involving Integrys Energy Group, Inc. in which Integrys Energy Group, Inc. is not the continuing or surviving corporation.” (Exhibit A at p. 4). The merger between IEG and WEC also constitutes a “Change in Control” as that term is defined by the Internal Revenue Code Section 409A, as it will result in a change in the ownership of IEG, a change in the effective control of IEG, and/or a change in the ownership of a substantial portion of IEG’s assets.

17. Because the sale of IES to Exelon was made a part of and was a condition precedent to the execution of the Agreement and Plan of Merger between IEG and WEC, Plaintiffs experienced a “Change in Control” upon the sale of IES to Exelon, as a result of which, any unvested RSU awards became fully vested and payable pursuant to the terms and conditions of the Plan.

18. Further, based on Section 409A of the Internal Revenue Code, which is incorporated in the Plan, a change in control event occurred on the sale of IES and did not

require a change in the status of the entire group of affiliated corporations. Instead, under Section 409A, a change in control occurs upon any change in control of the employee's direct employer (i.e., the corporation for which the employee performed services).

19. Alternatively, a change in control entitling Plaintiffs to vesting of the RSUs they had been granted prior to the sale of IES to Exelon would be deferred until the consummation of the merger between IEG and WEC, since Internal Revenue Code Section 409A and Section 9 of the Plan permitted Plaintiffs continued participation in the Plan and post-employment vesting in situations such as the present circumstances, even though the Plan participants' employment terminated upon the sale of IES to Exelon. Thus, Plaintiffs would still be considered active employees of IEG and participants in the Plan, and their RSUs continued and were subject to the Plan's accelerated vesting schedule pursuant to Internal Revenue Code Section 409A.

20. In addition, the Plan further provides that "in connection with any merger, consolidation, acquisition of property or stock, or reorganization, the Committee may authorize the issuance of awards under this Plan upon such terms and conditions as it may deem appropriate in exchange for the cancellation, exchange or assumption of awards held by individuals affected by such merger, consolidation, acquisition or reorganization." (Exhibit A at p. 17). The Plan also states that "[t]he Committee, in the event of the death of a Participant or in any other circumstance, may accelerate distribution of any Plan Award in its entirety or in a reduced amount...in each case on such basis and in such manner as the Committee may determine in its sole discretion." (Exhibit A at p. 33). Therefore, a distribution of Plaintiffs' RSU awards is consistent with the terms of the Plan and its purpose. Since Defendant was already in the process of merging with WEC at the time the Plaintiffs received their last RSU grant in February 2014, it would have been contrary to the purpose of the Plan and inconsistent

with the fiduciary obligation that IEG owed Plaintiffs as sponsor and administrator of the Plan to issue Plaintiffs RSU grants in 2014 that IEG knew would be worthless in contemplation of the sale of IES to a third party as mandated by the proposed merger. Plaintiffs earned the RSUs that were granted to them prior to the merger based on their performance during the prior year and their retention as IES employees and the loyalty they had shown; and divesting that grant of value is inconsistent with the nature and purpose of the Plan, as well as the terms thereof.

21. Plaintiffs made repeated demands upon Defendant that it vest their RSUs in accordance with the change in control provisions of the Plan; however, Defendant has refused to do so. Instead, Defendant treated Plaintiffs' unvested RSUs as forfeited and removed the awarded but unvested RSUs from the Plaintiffs' accounts.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court declare and adjudge the instant controversy as follows:

A. Declare that a "Change in Control" occurred with respect to Plaintiffs, making their RSU awards fully vested as of November 1, 2014 and restoring said RSU grants to Plaintiffs' accounts; or, in the alternative,

B. Declare that a "Change in Control" has not yet occurred, but find that Plaintiffs remain active participants under the Plan pursuant to Internal Revenue Code Section 409A and restore the Plaintiffs' RSU grants to their accounts with full vesting taking place when the merger between IEG and WEC is consummated; and

C. Grant Plaintiffs any and all other relief that this Court deems just and equitable under the circumstances, including the award of costs and attorneys' fees incurred in connection with this action.

Dated: March 10, 2015

Respectfully submitted,



Mark D. DeBofsky
One of the Attorneys for Plaintiffs

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