

THE PROVINCE OF ALBERTA

GAS UTILITIES ACT

ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER of an
Application for Exemption from
Certain Sections of the *Public
Utilities Board Act* by UtiliCorp
Networks Canada Ltd.

ORDER U2001-097

Application No. 2001081
File No. 6640-190

THE APPLICATION

By letter dated March 14, 2001 UtiliCorp Networks Canada Ltd. (UNCL) filed an application (the Application) with the Alberta Energy And Utilities Board (the Board) seeking:

- a declaration by the Board under Section 91.1(4) of the *Public Utilities Board Act* (the PUB Act) that Section 91.1(2) does not apply to any transactions or class of transactions carried out by UNCL; and in the alternative, an order pursuant to Section 71(1)(c) of the PUB Act in respect of UNCL exempting UNCL from compliance with Section 91.1(2) of the PUB Act;
- an order pursuant to Section 71(1)(c) of the PUB Act exempting UNCL from compliance with the requirement for Board authorization under Section 92 of the PUB Act, such exemption to apply so long as any transfer of shares of UNCL does not result in beneficial ownership of UNCL by UtiliCorp United Inc. (UCU) becoming less than 50%; and
- an order pursuant to Section 71(1)(c) of the PUB Act exempting UNCL from compliance with the requirements for approval of the Board and publication in the Alberta Gazette under Section 99 of the PUB Act, such exemption to apply so long as any union involving UNCL does not result in UNCL directly owning or operating a public utility in Alberta.

UNCL stated that it provided a copy of the Application to all parties to the Distribution Tariff application of UtiliCorp Networks Canada (Alberta) Ltd. (UNCA), which is currently before the Board. In addition, the Board published a Notice for Objections in newspapers having a general circulation in UNCA's franchise areas and distributed the Notice to those parties listed on its

April 30, 2001

mailing list for the distribution tariff and regulated rate option tariff. The Board received no objections to the Application by the due date of April 6, 2001, pursuant to issuance of the Notice.

POSITION OF UNCL

UNCL stated that it is indirectly wholly-owned by UCU and that it owns all of the shares of UNCA, which, in turn, is the direct owner of an electric distribution system as defined in Section 1(1)(d) of the *Electric Utilities Act* (EUA). UNCL submitted that it does not directly own any public utility as defined under the PUB Act or the EUA and does not provide any public utility service to the public. UNCL further submitted that the declarations sought in the Application are appropriate since it does not directly own or operate the electric distribution system owned and operated by UNCA, nor does it own or operate any other public utility in Alberta.

UNCL submitted that the exemption it seeks would allow its participation in internal reorganizations, and other transactions, undertaken by the group of companies owned in whole or in part by UCU. UNCL also submitted that an order of the Board would still be required if ultimate control of UNCL would cease to be held by UCU or to allow UNCL to engage in directly owning or operating a public utility in Alberta. UNCL stated that the declaration and exemptions requested would not diminish the ability of the Board to regulate the public utility activities of UNCA, nor bind, affect or prejudice the Board in any way in its consideration of any other matter or question related to UNCA.

EUB FINDINGS

The Board notes that the declaration sought by UNCL under Section 91.1(4) or an order pursuant to Section 71(1)(c) of the PUB Act would allow UNCL to undertake internal reorganizations, and other transactions, undertaken by the group of companies owned in whole or in part by UCU without prior Board approval so long as beneficial control of UNCL remains with UCU.

The Board agrees with UNCL that requiring UNCL to go through the approval process set out in Section 91.1(2) of the PUB Act could impact its ability to participate on a timely basis in internal reorganizations within the group of companies controlled by UCU, or to engage in other financial transactions unrelated to utility operations, not otherwise subject to the Board's scrutiny. The Board also notes that it did not receive any objection to the Application.

The Board was informed that UNCL is UNCA's wire services provider. UNCL was designated by UNCA as a wire services provider solely for the purpose of acting as a retailer to customers that choose to pay a regulated rate for electricity pursuant to the Regulated Rate Option Regulation (RRO and RRO Regulation) and, by way of an arrangement with EPCOR Energy Services (Alberta) Inc., these functions are now carried out by EPCOR Energy Services (Alberta) Inc..

Pursuant to the Roles, Relationships and Responsibilities Regulation (RRR Regulation) adopted under the EUA, a wire services provider must carry out certain functions enumerated in Section 3 of the RRR Regulation. These functions consist of a number of electricity services (as defined

in Section 1(g.1) of the EUA) associated with the provision of electricity to customers, including the provision of the RRO to customers. Pursuant to Section 5 of the RRR Regulation, a wire services provider may make an arrangement with other persons for the provision of all or some of these functions as long as the arrangement does not lessen or remove the responsibility or liability of the wire services provider for carrying out these functions. The Board believes that through these regulatory provisions, UNCL has in fact become a provider of electricity services and therefore operates, for that limited purpose, a public utility in Alberta.

The Board has carefully considered the effect of the applied for exemptions on UNCL's ability to carry out its functions as a wire services provider and on UNCL's responsibility and liability as a wire services provider. The Board believes that the exemptions requested with respect to the class of transactions contemplated by the present application would not affect the Board's ability to ensure that UNCL carries out its functions as a wire services provider and would not lessen or remove UNCL's responsibility and liability with respect to these functions. However, the Board is still concerned about its ability to oversee the operations of UNCL and UNCA and will attach conditions to its order to ensure that UNCL maintains its ability to carry out its functions as a wire services provider and to ensure that UNCL does not dispose of the shares of UNCA and that UNCA does not dispose of its assets without further approval of the Board.

Finally, the Board notes that pursuant to Section 71(1)(4) of the PUB Act the Board, on its own initiative or on the application of a person having an interest, can rescind in whole or in part an order made by it under Section 71. For the above reasons the Board will grant the Application pursuant to Section 71(1)(c).

ORDER

THEREFORE, for UtiliCorp Networks Canada Ltd.:

- (1) Pursuant to Section 71(1)(c) of the PUB Act, the Board declares that UtiliCorp Networks Canada Ltd. is exempted from the requirements of Section 91.1(2) of the PUB Act with respect to any transactions or classes of transactions included in that Section and carried out by UtiliCorp Networks Canada Ltd.;
- (2) Pursuant to Section 71(1)(c) of the PUB Act, the Board declares that Section 92 of the PUB Act, does not apply to a transfer of the shares of UtiliCorp Networks Canada Ltd. so long as any transfer of shares of UtiliCorp Networks Canada Ltd. does not result in beneficial ownership of UtiliCorp Networks Canada Ltd. by UtiliCorp United Inc. becoming less than 50%;
- (3) Pursuant to Section 71(1)(c) of the PUB Act, the Board declares that UtiliCorp Networks Canada Ltd. is exempted from compliance with the requirements of Section 99 of the PUB Act to obtain prior Board approval and to publish in the Alberta Gazette any union involving UtiliCorp Networks Canada Ltd., so long as the union does not result in UtiliCorp Networks Canada Ltd. directly owning or operating a public utility in Alberta (other than as a wire services provider pursuant to its present designation by UtiliCorp Networks Canada (Alberta) Ltd.);

- (4) Nothing in this Order shall affect the ability, nor its responsibility and liability, of UtiliCorp Networks Canada Ltd. to act as a wire services provider for UtiliCorp Networks Canada (Alberta) Ltd.;
- (5) UtiliCorp Networks Canada Ltd. shall not dispose of the shares of UtiliCorp Networks Canada (Alberta) Ltd. and UtiliCorp Networks (Alberta) Ltd. shall not dispose of its assets without further approval of the Board;
- (6) Nothing in this Order shall bind, affect or prejudice the Board in any way in its consideration of any other matter or question relating to UtiliCorp Networks Canada Ltd.;
- (7) This Order remains in effect until revoked by the Board.

Dated in Calgary, Alberta on April 30, 2001.

(original signed R. Heggie)

ALBERTA ENERGY AND UTILITIES BOARD