G-007,011/M-95-30 ORDER PERMITTING UTILICORP TO ENTER INTO A LOAN GUARANTEE AGREEMENT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Marshall Johnson	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner

In the Matter of a Petition by UtiliCorp United Inc. for Approval of a Proposed Loan Purchase Agreement

ISSUE DATE: February 23, 1995

DOCKET NO. G-007,011/M-95-30

ORDER PERMITTING UTILICORP TO ENTER INTO A LOAN GUARANTEE AGREEMENT

PROCEDURAL HISTORY

On April 8, 1993 UtiliCorp United Inc. (Utilicorp or the Company)[1] filed a petition with the Commission requesting authorization to invest in a foreign utility. The filing indicated that the Company planed to acquire an interest in WEL Energy Group (WEL), a New Zealand corporation engaged in the business of providing electric service in the Waikato region of New Zealand. The matter was assigned to Docket No. G-011/S-93-281.

In its June 15, 1993 ORDER GRANTING LIMITED AND CONDITIONED CERTIFICATION in Docket No. G-011/S-93-281, the Commission required UtiliCorp to notify the Commission in advance of any issuance that would be used, entirely or in part, to meet a capital call by the board of directors of WEL.

On September 30, 1994, Utilicorp filed a request with the Commission to provide certification to the Securities Exchange Commission (SEC) under Section 715 of the Public Utility Holding Company Act (PUHCA) with respect to Utilicorp's proposed acquisition of interest in Power New Zealand Limited (PNZ) and Energy Direct Corporation Limited (EDL), both New Zealand electric utilities. The matter was assigned to Docket No. G-011/S-94-907.

On November 30, 1994, the Commission issued its ORDER GRANTING CERTIFICATION SUBJECT TO LIMITATIONS AND CONDITIONS in Docket No. G-011/S-94-907.

On January 9, 1995, UtiliCorp filed a petition with the Commission requesting authorization to enter into a loan guarantee agreement with Citibank and UtiliCorp South Pacific (USP).

On January 13, 1995, UtiliCorp filed additional information.

On February 6, 1995, the Minnesota Department of Public Service (the Department) filed Comments.

On February 16, 1995, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

[1] In Minnesota, Utilicorp provides retail natural gas service through its Peoples Natural Gas Division (Peoples) and its Northern Minnesota Utilities Division (NMU).

A. Background

UtiliCorp's wholly owned subsidiary UtiliCorp South Pacific (USP) intends to borrow funds from the Wellington, New Zealand branch of Citibank, N.A. (Citibank) or a syndicate of banks, including Citibank for the following purposes:

1. to meet a capital call of WEL Energy Group Limited (WEL)[2] and

2. to acquire shares in Energy Direct Corporation Limited (EDL) and Power New Zealand Limited (PNZ)[3]

The prospective lender, Citibank, is requiring Utilicorp to secure this loan to USP. However, before the Company can secure the loan to USP, UtiliCorp must have permission from the Commission to enter the agreement. 15 U.S.C. § 79z-5b(f)(2)(B).

B. UtiliCorp's Request

In the petition under consideration in this matter, UtiliCorp has requested authorization to enter into a loan guarantee agreement with Citibank and USP. The Company stated that by entering the agreement, UtiliCorp would agree to purchase the outstanding balance of a five year $96 million dollar loan from Citibank in the event that UtiliCorp South Pacific defaults on the loan. The Company requested that the Commission either permit UtiliCorp to enter into the guarantee agreement or waive any objection to the agreement.

UtiliCorp explained that while it had originally intended to directly borrow these funds, it had discovered that direct funding by UtiliCorp would have adverse tax consequences that could be avoided if the debt was issued by USP, a New Zealand company. The Company argued that the end result under either loan arrangement (direct loan to UtiliCorp or UtiliCorp as guarantor of loan to USP) results in the same level of risk for UtiliCorp and the lenders and would not change the level of risk to Minnesota ratepayers. The Company noted that this level of risk was found acceptable in the June 15, 1993 Order and the November 30, 1994 Order.

C. The Department's Comments

The Department analyzed the difference between the estimated $91.9 million investment and the presently requested loan of $96 million and found the difference caused by three variables: the changes in the exchange rate, the increase in the purchase price of PNZ stock in the open market, and the additional PNZ stock that UtiliCorp expects to purchase within the limits of prior Commission approval. The Department found these changes reasonable.

Regarding the Company's specific request, the Department initially recommended that the Commission waive objection to the loan guarantee rather than permit the agreement. The Department felt that taking the step of permitting the loan guarantee required a higher standard of proof and stated that waiving objection to the loan guarantee met the Company's need. The Department suggested that permitting the loan guarantee should be made in conjunction with a detailed audit of UtiliCorp's and USP's books.

Subsequently, the Department withdrew the auditing suggestion and indicated that a Commission Order permitting the loan guarantee would be appropriate. The Department

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[2] Acquisition of an interest in WEL was authorized by the Commission's June 15, 1993 ORDER GRANTING LIMITED AND CONDITIONED CERTIFICATION in Docket No. G-011/S-93-281.

[3] Acquisitions required to secure interests in PNZ and EDC were authorized by the Commission in its November 30, 1994 ORDER GRANTING CERTIFICATION SUBJECT TO LIMITATIONS AND CONDITIONS in Docket No. G-011/S-94-907.

foresaw no change in the Company's utility service to Minnesota customers as a result of the loan guarantee.

D. Commission Analysis

In general, public utilities such as UtiliCorp are prohibited by the PUHCA from issuing any security to finance the acquisition, ownership, or operation of a foreign utility, and from assuming any obligation or liability as guarantor of any security of a foreign utility company. A public utility may be exempt from this prohibition if, in addition to other criteria not relevant to this Order,

> each State commission having jurisdiction with respect to the retail electric and gas rates of the public utility company *expressly permits* the utility to engage in the transaction....[4]

The Commission has previously reviewed the proposed acquisitions and found the level of risk appropriate. No subsequent development has altered that analysis. In sum, the Commission concludes that the maximum possible loan purchase obligation is too small[5] and the risk too remote to jeopardize the financial health of UtiliCorp's utility operations in Minnesota. The Commission has the authority and resources to protect Minnesota ratepayers from any additional risk that may result from the loan guarantee.

E. Commission Action

Based on the information and explanation from the Company, the Department's review and recommendation, and the Commission's foregoing analysis, the Commission will grant

UtiliCorp's request and *expressly permit* it (see the cited section of PUHCA) to enter into the loan guarantee agreement.

ORDER

1. UtiliCorp United Inc.'s (UtiliCorp or the Company's) petition for authorization to enter into a loan guarantee agreement with Citibank and USP is granted. The Company is hereby permitted to enter into this agreement.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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[4] Public Utility Holding Company Act of 1935, Section 33 (f)(2)(B).

[5] The maximum loan purchase obligation equals 3.3 percent of UtiliCorp's $2,874,700,000 assets.