

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of a Petition by UtiliCorp United Inc. for Minnesota Public Utilities Commission Certification to Invest in a Foreign Utility under 15 U.S.C. § 79z-5b

ISSUE DATE: January 21, 2005

DOCKET NO. G-011/S-93-281

In the Matter of a Petition by UtiliCorp United Inc. for Minnesota Public Utilities Commission Certification to Invest in a Foreign Utility under 15 U.S.C. § 79z-5b

DOCKET NO. G-011/S-94-907

In the Matter of a Petition by UtiliCorp United Inc. for Minnesota Public Utilities Commission Certification to Invest in a Foreign Utility under 15 U.S.C. § 79(c)

DOCKET NO. G-011/S-95-204

In the Matter of a Petition by UtiliCorp United, Inc. for Certification to Invest in a Foreign Utility

DOCKET NO. G-007, 011/S-98-682

ORDER ENDING DUTY TO MAKE ANNUAL FILING ON FOREIGN UTILITY COMPANIES

PROCEDURAL HISTORY

On October 28, 2004, Aquila, Inc. (formerly UtiliCorp United, Inc.) asked to be released from its Commission-imposed duty to report on the status of its investments in foreign utility companies as that term is used in the federal Energy Policy Act of 1992.

On November 30, 2004, the Minnesota Department of Commerce (the Department) filed comments.

On December 7, 2004, Aquila filed reply comments.

The Commission met on January 13, 2005, to consider this matter.

FINDINGS AND CONCLUSIONS

I. BACKGROUND

The federal Public Utilities Holding Company Act (PUHCA)¹ regulates how public utilities may invest in other entities. But the federal Energy Policy Act of 1992 provides for a foreign utility company to be exempt from PUHCA regulations. In particular, when a state-regulated holding company or public utility acquires a foreign utility company, 15 U.S.C. § 79z-5b(a)(2) permits the foreign utility company to be exempt from PUHCA regulation if, among other requirements, each state commission with jurisdiction over the public utility certifies to the federal Securities and Exchange Commission (SEC) that –

- the state commission has the authority and the resources to protect ratepayers subject to its jurisdiction and
- the state commission intends to exercise that authority.

II. AQUILA’S REQUEST

Aquila is an energy and service company with two divisions – Aquila Networks-PNG and Aquila Networks-NMU – that provide retail gas distribution service in Minnesota. When seeking to buy interests in foreign utility companies in the past, Aquila has asked the Commission to certify to the SEC that the Commission has the requisite authority, resources and intent. The Commission granted these requests with conditions.² Generally, the Commission directed Aquila to inform the Commission before it acquires additional interests in foreign utility companies, to obtain a separate Commission certification each time Aquila proposes to acquire additional interests, and to report annually on its foreign utility operations.

¹ 15 U.S.C. § 79.

² *In the Matter of a Petition by UtiliCorp United Inc. for Minnesota Public Utilities Commission Certification to Invest in a Foreign Utility under 15 U.S.C. § 79z-5b*, Docket No. G-011/S-93-281 ORDER GRANTING LIMITED AND CONDITIONED CERTIFICATION (June 15, 1993); *In the Matter of a Petition by UtiliCorp United Inc. for Minnesota Public Utilities Commission Certification to Invest in a Foreign Utility under 15 U.S.C. § 79z-5b*, Docket No. G-011/S-94-907 ORDER GRANTING CERTIFICATION SUBJECT TO LIMITATIONS AND CONDITIONS (November 30, 1994); *In the Matter of a Petition by UtiliCorp United Inc. for Minnesota Public Utilities Commission Certification to Invest in a Foreign Utility under 15 U.S.C. § 79(c)*, Docket No. G-011/S-95-204 ORDER FINDING AUTHORITY, RESOURCES AND INTENT TO USE THEM AND REQUESTING FILINGS (June 9, 1995) and ORDER GRANTING CERTIFICATION (July 18, 1995); *In the Matter of a Petition by UtiliCorp United, Inc. for Certification to Invest in a Foreign Utility*, Docket No. G-007, 011/S-98-682 ORDER GRANTING CERTIFICATION WITH CONDITIONS (August 17, 1998).

Aquila now asks to be relieved of its duty to make annual reports on its foreign utility operations because it has divested itself of these operations.

III. PARTY COMMENTS

The Department has no objection to eliminating Aquila's obligation to file annual reports about foreign utility companies that it no longer operates. But the Department recommends that the Commission maintain Aquila's obligation to provide advance notification of any intent to acquire new interests in foreign utility companies and to obtain separate certification for any such investments.

Aquila generally finds the Department's recommendation reasonable. But Aquila expresses concern that the Department's proposed language might be construed to require Aquila to seek certification to invest in a foreign utility company, even if that certification was not required by PUHCA's § 79z-5b(a)(2). Aquila notes that the Commission had previously clarified that the Commission merely seeks certification with regard to foreign investments to which § 79z-5b(a)(2) applies.³

IV. COMMISSION ACTION

The Commission finds no disagreement among the parties.

Based upon a review of the record, the Commission finds Aquila's request reasonable and will grant it. If Aquila no longer has any financial interest in foreign utility companies, then the annual reporting requirement no longer serves any purpose. That obligation has now been fulfilled.

The Department rightly notes that granting Aquila's request will not alter Aquila's duty to inform the Commission of any future intent to acquire interest in a foreign utility company. Nor does it alter Aquila's duty to obtain, when appropriate, new certification that the Commission has adequate authority, resources, and intent to protect ratepayers' interest. And Aquila is correct that the Commission has not imposed upon Aquila any requirement to seek Commission certification except where that certification is required by federal statute or the SEC. Nothing in this Order augments or diminishes these obligations.

With these clarifications, the Commission will so order.

³ Docket No. G-007, 011/S-95-204 ORDER FINDING AUTHORITY, RESOURCES AND INTENT TO USE THEM AND REQUIRING FILINGS (June 9, 1995), n.2, as modified by ERRATUM NOTICE (June 13, 1995).

ORDER

1. Aquila's duty to file annual foreign utility investment reports, arising from Commission Orders in Docket Nos. G-011/S-93-281, G-011/S-94-907, G-011/S-95-204, and G-007, 011/S-98-682, is terminated.
2. Aquila shall continue to –
 - provide advance notice of its intent to acquire any new interest in a foreign utility company and
 - obtain separate certification for any investment in foreign utility companies if required under federal statute or by the federal Securities and Exchange Commission.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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