

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 30th
day of July, 1997.

In the Matter of the Application of UtiliCorp)
United Inc., for Authority, Among Other Things)
to Acquire Indirectly Up To and Including 37.5%)
of the Capital Stock of Power New Zealand)
Limited, a New Zealand Electric Utility, and)
Up To and Including 20% of the Capital Stock of)
Energy Direct Corporation Limited, a New Zealand)
Electric Utility, and To Take All Other Actions)
Reasonably Necessary to Effectuate Said)
Transactions.)

CASE NO. EM-95-84

THIRD SUPPLEMENTAL ORDER APPROVING STOCK ACQUISITION

On June 4, 1997, UtiliCorp United Inc. (UtiliCorp) filed an Application for Third Supplemental Order and Report of UtiliCorp United Inc., seeking Commission authorization pursuant to Section 393.190, RSMo 1994 and 4 CSR 240-2.060(9) to indirectly acquire 50.25 percent shares of stock in Power New Zealand (PNZ). UtiliCorp is a Delaware Corporation engaged in providing electrical and natural gas utility service in the State of Missouri through its operating division, Missouri Public Service (MPS). While UtiliCorp's request is not a complex one, the Commission finds that a brief summary of the history and background of this case will assist in understanding UtiliCorp's present application.

This case originated on September 21, 1994, when UtiliCorp filed an application seeking Commission authorization to indirectly acquire up to 37.5 percent of the capital stock of PNZ and 20 percent of the capital stock of EnergyDirect Corporation Limited (EDL), both of which are New Zealand electric utilities. The stock purchases in PNZ and EDL were to be made by UtiliCorp N.Z., Inc. (UNZ). UtiliCorp owns 79 percent of the

capital stock of UNZ through its wholly-owned subsidiary UtiliCorp South Pacific, Inc. (USP). On November 21, 1994, the Commission issued an Order Approving Stock Purchase, which authorized UtiliCorp's indirect acquisition of 37.5 percent and 20 percent of the capital stock of, respectively, PNZ and EDL, subject to a number of conditions requested by Staff.

On January 10, 1995, UtiliCorp filed an application for a supplemental order requesting Commission approval to enter into a loan purchase agreement. UtiliCorp's subsidiary, USP, planned to borrow up to 150 million in New Zealand dollars (NZ) from a New Zealand bank or syndicate of banks, with the loan to be in the nature of a line of credit having a term of three years. UtiliCorp sought authority to agree to purchase the loan from the bank syndicate in the event USP defaulted on the loan, thereby in essence guaranteeing the obligations of its subsidiary. On March 10, 1995, the Commission issued an Order Approving Financing, which authorized UtiliCorp to enter into the loan purchase agreement in accordance with its application.

On August 2, 1995, UtiliCorp filed an application for a second supplemental order requesting Commission authorization for a change in the purpose for which the previously-authorized loan proceeds would be used. Originally, a portion of the \$150 million (NZ) obtained by USP was to be used to finance the acquisition of stock in EDL by UNZ. The shares of EDL which UNZ was to acquire were subject to a call option by the original owner of the shares. Since the call option was exercised, UNZ could no longer obtain those shares. Instead, UtiliCorp proposed that USP use the remainder of its loan amount to fund UNZ's acquisition of additional shares of stock in WEL Energy Group Limited (WEL).¹ On September 19, 1995, the

¹UtiliCorp was previously authorized in Case No. EM-93-50 to acquire a certain percentage of ownership interest in WEL.

Commission issued a Supplemental Order Approving Financing, which authorized \$45 million (NZ) of the previously approved \$150 million (NZ) loan proceeds to be used for the acquisition of shares in WEL rather than EDL.

In the present application, UtiliCorp seeks to obtain Commission authorization to acquire an additional ownership interest in PNZ. UNZ has a 30.60 percent ownership interest in PNZ as of the end of June, 1997. Mercury Energy Limited (Mercury) has a 33.2 percent ownership interest in PNZ. UNZ has negotiated a Joint Venture Agreement (the Agreement) with Mercury, under which both companies will transfer all of their shares in PNZ to a newly-formed company, Newco. Prior to the transfer UNZ will purchase an additional two million shares of PNZ from Mercury to equalize the ownership interests of the companies in PNZ, at a price of \$6.00 per share. This purchase will result in an increase in UNZ's ownership interest in PNZ to 31.85 percent. After transfer of the PNZ shares, UNZ and Mercury will become equal owners in the voting shares of Newco.² Newco shareholder voting rights will be equally divided between UNZ and Mercury, as will representation on the Board of Directors of Newco. The rights and obligations of UNZ and Mercury with respect to the ownership and management of PNZ will be governed by the Agreement. Subsequently, Newco will undertake to acquire on the open market or through privately negotiated transactions all of the remaining outstanding shares of PNZ. Consequently, UNZ's ownership interest in PNZ may increase to a 50 percent voting interest as a result of the Agreement.

²However, for tax control purposes, UNZ will also receive a 0.25 percent nonvoting interest in Newco.

Newco will take out a nonrecourse loan to purchase the remaining outstanding shares of PNZ.³ This indebtedness will be secured by a pledge of Newco's shares of PNZ stock. Neither UtiliCorp, UNZ, or any intermediate subsidiary will provide funds for the purchase of the remaining PNZ shares, nor will they guarantee any indebtedness of Newco or otherwise become financially obligated in any way in connection with the proposed acquisition by Newco on the open market or through privately negotiated transactions.

Thus, UtiliCorp will increase the percentage interest in PNZ that it may indirectly acquire from the currently authorized 37.5 percent ownership interest to a total of 50.25 percent ownership interest. This is possible in part because the limitations and restrictions on the percentage acquisition of PNZ shares that could be acquired by a single shareholder, as described by UtiliCorp in its initial application of September 21, 1994, have been waived by the PNZ Board of Directors at the behest of the New Zealand Stock Exchange.

UtiliCorp states that the proposed acquisition of the shares of stock of PNZ by a subsidiary of UtiliCorp will have no adverse affect on Missouri customers of UtiliCorp. UtiliCorp claims that its Missouri customers will see no change in their day-to-day utility service, and these customers will continue to be served effectively and efficiently. Further, UtiliCorp states that the proposed transaction will have no impact on the tax revenues of Missouri political subdivisions in which any structure, facility, or equipment of UtiliCorp is located. As a result, UtiliCorp

³Some of the remaining outstanding shares of PNZ may be acquired by UNZ on behalf of Newco, and then transferred to Newco. In the event this occurs, Newco will arrange for the financing required by UNZ to acquire and then immediately transfer to Newco any additional PNZ shares.

maintains that the proposed transaction is not detrimental to the public interest.

Finally, UtiliCorp notes that the Agreement requires UtiliCorp to have all necessary regulatory approvals for the proposed transaction by July 31, 1997. Consequently, UtiliCorp filed a separate Motion for Expedited Consideration along with its application, which asks that the Commission approve the described transaction in an order bearing an effective date of no later than July 31, 1997.

On July 11, 1995, the Staff of the Commission (Staff) filed a memorandum regarding UtiliCorp's application. Staff's memorandum first summarizes the history of this case, as well as UtiliCorp's request in its third supplemental application. Staff notes that the newly formed company, Newco, will be equally owned by UNZ and Mercury, and at its inception will own a total of approximately 63.75 percent of the common stock of PNZ. Staff also notes that as of June 17, 1997, PNZ was trading at \$6.18 (NZ) per share, and the exchange rate was \$0.70 in United States currency to each \$1.00 in New Zealand currency. Staff states that the acquisition of the additional shares of PNZ will be financed through a nonrecourse loan to be secured by the shares of PNZ stock, and that UtiliCorp will not be guaranteeing any of the debt to purchase the additional shares of PNZ stock. In addition, Staff states that neither UtiliCorp nor UNZ will be financially obligated in any way to the newly formed holding company under the proposed transaction. Therefore, Staff believes that the proposed transaction will not be detrimental to the ratepayers of MPS, and recommends that the Commission approve UtiliCorp's application to acquire up to and including 50.25 percent of PNZ.

However, Staff advocates Commission approval of UtiliCorp's request subject to certain conditions, as follows:

(1) That nothing in the Commission's order shall be considered a finding by the Commission of the value of this transaction for ratemaking purposes, and that the Commission reserves the right to consider the ratemaking treatment to be afforded these financing transactions in any later proceeding.

(2) That the Commission's order shall not be deemed to be precedent for any future financing even if the facts may be similar.

(3) That any adverse financial effects of this acquisition be borne by UtiliCorp's stockholders and not by Missouri ratepayers.

(4) That all records pertaining to these transactions be maintained at UtiliCorp's headquarters and made available to the Staff as the Staff deems necessary.

(5) That UtiliCorp be prepared to provide documentation of proper cost allocations to nonregulated entities.

(6) That UtiliCorp include the cost of any assistance provided to PNZ from MPS in the monthly surveillance reports sent to the Staff. This detail should also include the "reasonable remuneration" (Deed, Article 6.7 and 6.8) which the receiving party is required to pay to the entity providing the service, as well as the account where such remuneration is booked.

The Commission has reviewed UtiliCorp's application for a third supplemental order and Staff's recommendation, and finds that the relief sought in this application is reasonable and should be authorized. The Commission finds that UtiliCorp will not pledge any of its U.S. operating assets to fund the proposed transaction, and will not guarantee any indebtedness of Newco or otherwise become financially obligated in any way in connection with the proposed acquisition of additional shares of PNZ. Thus, the proposed transaction is unlikely to have any impact on UtiliCorp's Missouri jurisdictional operations. UtiliCorp is only seeking

to have the present percentage interest which it is authorized to acquire in PNZ increased from 37.5 percent to 50.25 percent. In addition, the Commission further finds that the conditions recommended by Staff are reasonably designed to protect the public interest. Thus, the Commission finds that UtiliCorp's application for a third supplemental order should be approved, and UtiliCorp authorized to indirectly acquire a total of up to 50.25 percent interest in PNZ. As modified by Staff's conditions, the Commission finds that the proposed transaction will not be detrimental to the public interest.

In its Motion for Expedited Consideration, UtiliCorp asked for a Commission order with an effective date no later than July 31, 1997. However, the Commission has been unable to accommodate UtiliCorp's requested effective date. Nevertheless, counsel for UtiliCorp by letter dated July 28, 1997 has requested that the Commission issue its order with a 10-day effective date.

IT IS THEREFORE ORDERED:

1. That UtiliCorp United Inc.'s application for a third supplemental order is hereby granted.
2. That the Commission's Order Approving Stock Purchase issued on November 21, 1994 is hereby amended to authorize UtiliCorp United Inc. to indirectly acquire up to and including 50.25 percent of the capital stock of Power New Zealand Limited, instead of the 37.5 percent acquisition previously authorized, as contemplated by UtiliCorp United Inc.'s application for third supplemental order filed on June 4, 1997.
3. That the Commission's approval of UtiliCorp United Inc.'s application for a third supplemental order is hereby subject to the conditions recommended by Staff as specified in this order.


4. That UtiliCorp United Inc. be authorized hereby to do all things not contrary to the law or to the rules and regulations of the Commission, necessary to the performance of the acts specifically authorized in this order, including the execution of such other agreements and documents as are reasonably necessary to the furtherance of the stock acquisition and other transactions authorized herein.

5. That nothing in this order shall be considered a finding of the Commission's value for ratemaking purposes of any stock or other properties herein involved, or as an acquiescence in the value placed upon said stock or other property by UtiliCorp United Inc. Furthermore, the Commission reserves the right to consider the ratemaking treatment to be afforded these transactions in any later proceeding.

6. That nothing in this order shall be considered to be precedent for any future financing cases.

7. That this order shall become effective on August 12, 1997.

BY THE COMMISSION



Cecil I. Wright
Executive Secretary

(S E A L)

Zobrist, Chm., Crumpton,
Murray, Lumpe, and Drainer,
CC., Concur.

ALJ: Bensavage