

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 19th
day of September, 1995.

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) CASE NO. EM-95-84
of EnergyDirect Corporation Limited, a New)
Zealand electric utility, and to take all other)
actions reasonably necessary to effectuate said)
transactions.)

SUPPLEMENTAL ORDER APPROVING FINANCING

On August 2, 1995, UtiliCorp United Inc. (UtiliCorp) filed an Application For Second Supplemental Order And Report Of UtiliCorp United Inc., seeking Commission authorization for a change in the purpose for which previously-authorized loan proceeds will be used. While UtiliCorp's request is a relatively simple one, the Commission finds that a brief summary of the history and background of this case will assist in understanding UtiliCorp's present application. 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).

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 Power New Zealand Limited (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). UNZ was to acquire its interest in PNZ through a variety of means, while the bulk of UNZ's interests in EDL -- 18.34 percent of the total 20 percent sought -- was to be acquired from Todd Corporation Limited (Todd). UNZ's initial investment in PNZ and EDL was to be funded with a short-term bridge loan with CitiBank, which would mature in early 1995, at which time UtiliCorp would permanently fund its share of the investment within an appropriate mix of common equity and long-term debt. 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. The Commission noted in its order that UtiliCorp's proposed investments equated to approximately 2.8 percent of its pro forma consolidated total assets, and that UtiliCorp's long-term debt to total capital ratio would only increase from 51.7 percent to 51.8 percent.

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 money (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. The purpose of the \$150 million (NZ) loan was twofold: (1) to contribute funds to enable it to acquire shares of PNZ and EDL, and (2) to enable USP to meet its obligation to fund the balance of the purchase price for its initial interest in WEL Energy Group Limited (WEL) as the result of the

capital call by the WEL board of directors.¹ 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.

In its current application UtiliCorp explains that the shares of EDL owned by Todd have always been subject to a call option by the original owner of the shares, which entitles that entity to repurchase the EDL shares, and that that entity has stated its intention to exercise its option and repurchase the EDL shares from Todd, the current owner. Since UNZ had intended to obtain its interest in EDL by purchasing the EDL shares owned by Todd, USP will require only about \$105 million (NZ) of the \$150 million (NZ) it has borrowed to fund UNZ's purchase of the PNZ shares. As a result, USP will have available to it under the loan an additional \$45 million (NZ) available for other purposes.

USP proposes to use the additional \$45 million (NZ) of the loan -- which would have been used by it to fund UNZ's cost to acquire the EDL -- to instead fund its portion of UNZ's cost to acquire additional shares of WEL on the open market. UtiliCorp would acquire an additional 12.64 percent indirect interest in WEL, for a total indirect interest of 38.71 percent. Since the purpose to which USP seeks to apply a portion of the loan proceeds is different than the purposes stated in UtiliCorp's Application For Supplemental Order filed with the Commission on January 30, 1995, UtiliCorp seeks Commission authorization to alter the purpose to

¹UtiliCorp was previously authorized to acquire, either directly or indirectly, a 33.33 percent ownership interest in WEL, as well as an additional 15.67 percent interest on the open market upon the occurrence of certain events, in Case No. EM-93-50. Due to a change in circumstances UtiliCorp is now free to indirectly acquire additional shares of WEL not to exceed an aggregate ownership interest of up to and including 49 percent. UNZ currently has a 33.33 percent ownership interest in WEL, which equates to a 26.07 percent indirect interest by UtiliCorp.

which \$45 million (NZ) of the loan proceeds is applied, to allow the loan proceeds to be used to acquire shares of WEL on the open market as authorized by the Commission in Case No. EM-93-50, instead of acquiring shares of EDL as originally anticipated.

On September 14, 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 second supplemental application. Staff assumed in its review and recommendation of the original applications in Case Nos. EM-93-50 and EM-95-84 that UtiliCorp would be directly responsible for the debt required to close the proposed transactions of indirectly purchasing the capital stock of WEL, PNZ, and EDL. Based on its previous analysis and upon UtiliCorp's statements that the proposed transactions will have no adverse effect on Missouri customers and those customers will see no change to their day-to-day utility service, and will continue to be served effectively and efficiently, Staff recommends that UtiliCorp's second supplemental application be granted.

However, Staff advocates that Commission approval of UtiliCorp's request be subject to the same conditions previously recommended by Staff and contained in the previous orders in Case Nos. EM-93-50 and EM-95-84. Those conditions are as follows:

- (1) Language making it clear that nothing in the order granting approval shall be considered as a finding by the Commission that would preclude the right to consider the ratemaking treatment to be afforded these or any future expenditures or allocations by UtiliCorp in any later proceeding;

- (2) That all records pertaining to these transactions be maintained at UtiliCorp's headquarters and made available to the Staff as the Staff deems necessary;
- (3) That UtiliCorp be prepared to provide documentation of proper cost allocations to nonregulated entities;
- (4) That UtiliCorp include the cost of any assistance provided to PNZ and/or EDL from Missouri Public Service 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;
- (5) That UtiliCorp be required to file with the Commission in a timely manner reports outlining each stock acquisition or a statement that the proposed acquisitions were not consummated. This will keep the Commission and Staff informed of UtiliCorp's ongoing activities, as well as allow for timely closing of this case; and
- (6) Language making it clear that the order shall not be deemed as precedent for future financings.

In addition, since Staff is recommending the substitution of WEL as opposed to EDL as it relates to UtiliCorp's loan guarantee in this proceeding, the Staff advocates that the Commission's order include a provision which rescinds UtiliCorp's authority to directly or indirectly acquire the capital stock of EDL as previously approved by the Commission in this case, except for approximately two percent of the capital stock of EDL, which could still be acquired by UNZ upon the election of Todd

Electricity Limited, pursuant to a certain Share Option Deed and Amending Deed dated September 1993. Staff believes that in the event UtiliCorp desires in the future to pursue the acquisition of the capital stock of EDL in excess of the limited two percent approval, UtiliCorp should be required to seek additional Commission approval.

Staff also indicates that UtiliCorp had requested a Commission order approving its application for a second supplemental order with an effective date of no later than September 15, 1995. However, due to Staff's workload and review of late requested documents, Staff was unable to file its recommendation in a timely manner which would allow the Commission to issue an order bearing UtiliCorp's requested effective date, therefore Staff requests that the Commission issue an order, with a 10-day effective date, to become effective prior to the proposed financing closing date of no later than September 29, 1995.

The Commission has reviewed UtiliCorp's application for a second supplemental order and Staff's recommendation, and finds that the relief sought in this application is warranted and should be authorized. As the Commission previously found in its order dated March 10, 1995, UtiliCorp will not pledge any of its U.S. operating assets through the proposed loan purchase agreement, and the proposed agreement will have a minimal impact on UtiliCorp's capital structure and on UtiliCorp's Missouri jurisdictional operations. UtiliCorp is only seeking to have the loan proceeds which it is guaranteeing to be used for the acquisition of WEL stock rather than EDL stock. The acquisition of WEL stock was previously approved by the Commission in Case No. EM-93-50, and the amount of WEL stock to be acquired will not exceed the amount approved in that case. 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 second supplemental order should be approved, and UtiliCorp authorized to indirectly acquire an additional 12.64 percent indirect interest in WEL through the application of USP's \$45 million (NZ) in loan proceeds for that purpose.

IT IS THEREFORE ORDERED:

1. That UtiliCorp United Inc.'s application for a second supplemental order be and is hereby granted.

2. That the Commission's Order Approving Financing issued on March 10, 1995 is hereby amended to permit \$45 million (NZ) of the previously approved \$150 million (NZ) loan proceeds to be used for the acquisition of shares of WEL Energy Group Limited on the open market, as authorized by the Commission in Case No. EM-93-50, instead of acquiring shares of EnergyDirect Corporation Limited, as contemplated by UtiliCorp United Inc.'s Application For Supplemental Order filed on January 10, 1995.

3. That the Commission's approval of UtiliCorp United Inc.'s application for a second supplemental order be and is hereby subject to the conditions recommended by Staff as specified in this order.

4. That the authority of UtiliCorp United Inc. to directly or indirectly acquire the capital stock of EnergyDirect Corporation Limited, which was previously granted by the Commission in its Order Approving Stock Purchase issued on November 21, 1994 in this case, be and is hereby rescinded, with the exception of approximately two percent (2%) of the capital stock of EnergyDirect Corporation Limited, which may be acquired by UtiliCorp NZ, Inc. upon the election of Todd Electricity Limited, pursuant to a certain Share Option Deed and Amending Deed dated September 1993.

5. 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 financing and stock acquisition authorized herein.

6. 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.

7. That nothing in this Order shall be considered to be precedent for any future financing cases.

8. That this Order shall become effective on September 29, 1995.

BY THE COMMISSION



David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Kincheloe,
Crumpton, and Drainer, CC., Concur.