



TriSummit Utilities Inc.

**Application for Approval Under Section 26
of the Gas Utilities Act**

August 15, 2022

Alberta Utilities Commission

Decision 27481-D01-2022

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Proceeding 27481

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1 Decision summary

1. In this decision the Alberta Utilities Commission approves TriSummit Utilities Inc.'s (TSU) request to enter into certain obligations related to the acquisition of assets located in Alaska, USA. In the last section of this decision, the Commission provides the relevant relief pursuant to the *Gas Utilities Act* and *Alberta Utilities Commission Act*.

2 Background

2. TSU is a Canadian corporation with Canadian natural gas distribution utility assets and is a designated owner of a gas utility for the purposes of Section 26 of the *Gas Utilities Act* pursuant to Section 2 of the *Gas Utilities Designation Regulation*. TSU indirectly and wholly owns, through a series of subsidiaries, Apex Utilities Inc., which is itself a designated owner of a gas utility under Section 2 of the *Gas Utilities Designation Regulation*. The operations of Apex are confined to Alberta and are regulated by the Commission pursuant to the *Alberta Utilities Commission Act*, the *Gas Utilities Act* and the *Public Utilities Act*.

3. On May 25, 2022, a newly formed, indirect, wholly owned American organized subsidiary of TSU, Alaska Utility Holdings Inc. (the Buyer¹), entered into an agreement to purchase utility assets and utility interests in Alaska, USA.²

4. On June 24, 2022, in accordance with Section 26 of the *Gas Utilities Act*, TSU applied to the Commission for an order or orders pursuant to Part 3 of the *Alberta Utilities Commission Act* and Part 2 of the *Gas Utilities Act* authorizing TSU to enter into certain obligations related to a utility acquisition in Alaska, USA.

5. In connection with the acquisition, TSU Utility Holdings Inc. will become a party to financing arrangements requiring TSU to provide an unsecured cross guarantee³ to debt holders with respect to the related payment and performance of the financing arrangement obligations (TSU cross guarantee 1).⁴

¹ Alaska Utility Holdings Inc. is a direct, wholly owned subsidiary of TSU Utility Holdings Inc., which is a newly formed, direct, wholly owned U.S. organized subsidiary of TSU USA Holdings Inc., which in turn is a newly formed, direct, wholly owned U.S. organized subsidiary of TSU.

² Exhibit 27481-X0002, application, paragraph 2.

³ A cross guarantee refers to an arrangement between two or more related companies to provide a guarantee to each other's obligations. Such a guarantee is commonly made among companies trading under the same group or between a parent company and its subsidiaries. A cross guarantee protects the company that incurred a liability (such as a loan) from losing its assets if it defaults on its obligations.

⁴ Exhibit 27481-X0002, application, paragraph 3.

6. TSU is also expected to enter into a new credit facility capable of providing funding in US dollars (the TSU US credit facility), which will require another subsidiary, TSU USA Holdings Inc., and TSU to reciprocally cross guarantee, on an unsecured basis, the TSU US credit facility (TSU cross guarantee 2).⁵ The two aforementioned cross guarantees are known as the Obligations.

7. TSU cross guarantee 1 will be issued and governed in accordance with U.S. law and will be unsecured. The initial term of the underlying debt is expected to be 10 years, subject to market conditions. Currently, it is anticipated that TSU cross guarantee 1 will, in effect, be evergreen, meaning that it will be renewed or replaced upon the expiry of this initial term and following any subsequent term's expiry.⁶

8. TSU cross guarantee 2 will be issued and governed in accordance with Canadian law and will be unsecured. The initial term of the underlying TSU US credit facility is expected to be approximately four years, subject to market conditions. Currently, it is anticipated that TSU cross guarantee 2 will also be evergreen.⁷

9. The TSU US credit facility was created for the purposes of funding the working capital requirements for the operations of the newly acquired assets upon the closing of the transaction. This will also be unsecured as TSU did not pledge any assets, including any of its Canadian investments, as security under the funding.⁸

10. TSU stated that it plans to purchase the Alaskan assets through an equity contribution of approximately \$471 million⁹ from its parent corporation, and unsecured debt of up to \$137 million issued by TSU Utility Holdings Inc. and unsecured debt of approximately \$167 million issued by the Buyer.¹⁰

11. In entering into the Obligations, TSU noted that its objective is to support its American subsidiaries in respect of the debt that it has issued and to provide working capital for the newly acquired assets. Further, it noted that the Obligations are unrelated to TSU's Canadian investments and operations, and are associated with what will become a new American investment when the Buyer completes the transaction.¹¹

3 The no-harm test

12. The Commission and its predecessor have historically applied the no-harm test in determining whether to approve internal corporate reorganizations and asset dispositions, as well as external transactions that result in a change of ownership of an operating utility company.¹² This is supported by a recent Commission decision where it stated:

⁵ Exhibit 27481-X0002, application, paragraph 3.

⁶ Exhibit 27481-X0002, application, paragraph 22.

⁷ Exhibit 27481-X0002, application, paragraph 23.

⁸ Exhibit 27481-X0002, application, paragraph 24.

⁹ All figures are in USD unless otherwise noted.

¹⁰ Exhibit 27481-X0002, application, paragraph 15.

¹¹ Exhibit 27481-X0002, application, paragraph 18.

¹² Decision 2005-112: AltaGas Utility Holdings Inc., Request for Approval of Share Transfer, Application 1408750-1, October 14, 2005, pages 3-4.

16. In deciding whether to approve a disposition application that is outside the ordinary course of business under Section 101(2) of the *Public Utilities Act*, the Commission and its predecessor have traditionally applied a “no-harm” test that considers the disposition in the context of both potential financial impacts and service level impacts, in terms of both quantity and quality, to customers.¹³
13. The no-harm test has been reviewed by several board, Commission and court decisions, and was summarized in Decision 2000-41 as follows:¹⁴
- ... rather than simply asking whether customers will be adversely impacted by some aspect of the transactions, the Board concludes that it should weight the potential positive and negative impacts of the transaction to determine whether the balance favours customers or at least leaves them no worse off, having regard to all the circumstances of the case. If so, then the Board considers that the transactions should be approved.
14. The evidence before the Commission demonstrates there will be no impacts to the safety or quality of utility service as a result of TSU entering into the Obligations. The Commission also finds that approval of the application will not result in any financial harm to customers.
15. TSU assured that its Canadian investments and operations, including the investment in and operations of Apex, will not be impacted as a result of the Obligations. The Commission also accepts that the current corporate structure of TSU’s Canadian subsidiaries and those subsidiaries’ businesses and operations will neither change nor be impacted by the Obligations.¹⁵ This is supported by a press release from DBRS Limited showing TSU’s credit rating before and after the announcement of the transaction as unchanged.¹⁶
16. The Commission is also satisfied with TSU’s explanation that the guarantees provided for the issued debt are borne by TSU, the parent of Apex, and there would be no distribution utilities pledged or encumbered as security to the issuance.¹⁷ Similarly, the Commission accepts that the debt issuances are not anticipated to affect Apex’s ability to attract future capital and that TSU would have the ability to pay creditors in the event of a default on the Obligations without affecting Apex or Alberta ratepayers as the debt is issued by the parent corporation.¹⁸ The Commission is also persuaded that the acquisition of the Alaskan assets will not materially change the debt-to-capitalization ratio of TSU, standing at approximately 53.9 per cent.¹⁹
17. Due to the nature of the transaction and because it is occurring outside Alberta, there will be no change to the regulatory oversight facing Apex or its customers as a result of the Obligations.

¹³ Decision 26163-D01-2021: ENMAX Corporation and Calgary District Heating Inc., Applications for Disposition of the Downtown District Energy Centre and Transfer of the Combined Heat and Power Generating Unit, Proceeding 26163, Applications 26163-A001 and 26163-A002, April 19, 2021.

¹⁴ Decision 2000-41: TransAlta Utilities Corporation, Sale of Distribution Business, July 5, 2000, PDF page 11.

¹⁵ Exhibit 27481-X0002, application, paragraph 19.

¹⁶ Exhibit 27481-X0005, Appendix C, and Exhibit 27481-X0006, Appendix D.

¹⁷ Exhibit 27481-X0013, TSU-AUC-2022JUL18-001(b).

¹⁸ Exhibit 27481-X0013, TSU-AUC-2022JUL18-002(b) and (d).

¹⁹ Exhibit 27481-X0013, TSU-AUC-2022JUL18-003.

18. In summary, the entering of TSU into the Obligations will not harm utility services or result in financial harm to customers. Accordingly, the Commission finds that the no-harm test has been satisfied and approves TSU's requested relief.

Dated on August 15, 2022.

Alberta Utilities Commission

(original signed by)

Matthew Oliver, CD
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
TriSummit Utilities Inc. (TSU) Stikeman Elliott LLP

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