



TriSummit Utilities Inc.

De-Designation Under Section 26 of the Gas Utilities Act

August 1, 2024

Alberta Utilities Commission

Decision 29096-D01-2024

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Proceeding 29096

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Published by the:

Alberta Utilities Commission
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The Commission may, no later than 60 days from the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

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1 Decision summary

1. In this decision, the Alberta Utilities Commission approves an application from TriSummit Utilities Inc. (TSU) and declares, pursuant to Section 8 of the *Alberta Utilities Commission Act* and Section 26(4) of the *Gas Utilities Act*, that Section 26(2) of the *Gas Utilities Act* does not apply to TSU, unless and until this order is varied by the Commission.

2 Introduction

2. TSU is a Canadian corporation with both utility and non-utility and regulated and non-regulated assets located in Canada and the United States. TSU wholly and indirectly owns Apex Utilities Inc., a natural gas distribution utility operating solely in Alberta, through its subsidiary companies TriSummit Utility Group Inc. (TriSummit Group) and TriSummit Utility Holdings Inc. (TriSummit Holdings). Apex is regulated by the Commission pursuant to the *Alberta Utilities Commission Act*, the *Gas Utilities Act* and the *Public Utilities Act*.

3. TSU is a designated owner of a gas utility for the purposes of sections 26 and 27 of the *Gas Utilities Act* under Section 2 of the *Gas Utilities Designation Regulation*, and a designated owner of a public utility for the purposes of Section 109 of the *Public Utilities Act* under Section 1(2) of the *Public Utilities Designation Regulation*. Apex, TriSummit Group and TriSummit Holdings are also designated owners for these purposes under the *Gas Utilities Designation Regulation* and the *Public Utilities Designation Regulation*.

4. As a designated owner for the purposes of Section 26 of the *Gas Utilities Act*, TSU must obtain the Commission's approval prior to conducting the financial transactions enumerated in Section 26(2) of the *Gas Utilities Act*, including issuing debt or equity or otherwise selling and encumbering property. If it does not do so, those transactions are void.

5. TSU seeks to be exempted from the operation of Section 26 of the *Gas Utilities Act*. On June 16, 2024, TSU filed an application with the Commission seeking either of the following forms of relief:

- An order or orders made pursuant to Section 8 of the *Alberta Utilities Commission Act* and Section 3(1)(c)(ii) of the *Gas Utilities Act* declaring that sections 26(2) through 26(5) of the *Gas Utilities Act* do not apply to TSU, thus de-designating TSU under Section 26(1) of the *Gas Utilities Act* for the purposes of sections 26(2) through 26(5) of the *Gas Utilities Act*.
- In the alternative, an order or orders made pursuant to Section 8 of the *Alberta Utilities Commission Act* and Section 26(4) of the *Gas Utilities Act* declaring that Section 26(2) of the *Gas Utilities Act* does not apply to any and all applicable transactions or class of transactions that TSU may undertake.

6. TSU does not seek any changes to its current designations as an owner for the purposes of Section 27 of the *Gas Utilities Act*¹ or Section 109 of the *Public Utilities Act*.² Further, its subsidiaries TriSummit Group, TriSummit Holdings and Apex would continue to be subject to their current designations as owners of gas and public utilities under the *Gas Utilities Designation Regulation* and the *Public Utilities Designation Regulation*.

7. The Commission issued a notice of application and received no statements of intent to participate. The record for this notice-only proceeding closed on June 26, 2024.

3 The Commission's jurisdiction to grant exemptions

8. TSU's preferred relief is an order under Section 3(1)(c) of the *Gas Utilities Act* and Section 8 of the *Alberta Utilities Commission Act*, declaring that TSU is exempt from sections 26(2) through 26(5) of the *Gas Utilities Act* (Section 3 exemption).

9. Section 3(1) of the *Gas Utilities Act*, which is substantively identical to Section 79(1) of the *Public Utilities Act*, gives the Commission jurisdiction to declare that any provision of the *Gas Utilities Act* does not apply to the owner of a gas utility. It states, in part:

3(1) The Commission, on its own initiative or on the application of a person having an interest, may, or on the order of the Lieutenant Governor in Council shall, declare

- (a) that any thing that is a gas utility by virtue of section 1(g)(i), (ii) or (iii) is not a gas utility,
- (b) that a person is not for the purposes of this Act an owner of a gas utility, or
- (c) that a provision of this Act does not apply to
 - (i) a gas utility,
 - (ii) an owner of a gas utility, or
 - (iii) gas or gas services offered or provided by the gas utility.

10. In the alternative, TSU requested an order under Section 26(4) of the *Gas Utilities Act* and Section 8 of the *Alberta Utilities Commission Act*, declaring that TSU is exempt from the requirement to seek Commission approval before undertaking a transaction or class of transactions listed in Section 26(2) of the *Gas Utilities Act* (Section 26(4) exemption).

11. Section 26(4) of the *Gas Utilities Act*, which is substantively identical to Section 101(4) of the *Public Utilities Act*, gives the Commission jurisdiction to grant exemptions from the requirement to obtain Commission approval prior to conducting the transactions specified in Section 26(2) of the *Gas Utilities Act*. It states:

26(4) The Commission, on its own initiative or on the application of a person having an interest, may, or on the order of the Lieutenant Governor in Council shall, declare that

¹ Section 27 of the *Gas Utilities Act* requires that designated owners of gas utilities obtain the Commission's approval prior to the sale or transfer of the shares of the designated entity's capital stock that would result in a vesting of more than 50 per cent of that capital stock, or the transactions are void.

² Section 109 of the *Public Utilities Act* applies to owners of gas and electric utilities and states that a union between designated owners of public utilities (or a designated owner and an undesignated owner) has no effect unless it is approved by the Commission.

subsection (2) or any part of it does not apply with respect to any transaction or class of transactions specified in the declaration.

12. Under both its Section 26(4) and Section 3 exemption requests, TSU seeks relief from Section 26(2) of the *Gas Utilities Act*. Section 26(2) requires that designated owners of gas utilities obtain the approval of the Commission prior to issuing debt or equity (or consummating a number of other transactions) or the transactions are void.

13. Under the Section 3 exemption request, TSU also seeks an exemption from sections 26(3), 26(4) and 26(5) of the *Gas Utilities Act*. Section 26(3) lists certain financial transactions for which the Commission's approval is not required, and Section 26(5) provides that when a declaration is made by the Commission under Section 26(4), certain transactions made prior to the declaration are no longer void or in contravention of the *Gas Utilities Act*.

4 Is approval of the application in the public interest?

14. When the Commission considers whether to grant an exemption pursuant to either Section 3 or Section 26(4) of the *Gas Utilities Act*, it must consider whether the requested exemption is in the public interest. This public interest test encompasses and requires consideration of the Commission's dual mandate to establish just and reasonable rates and to ensure the safety, reliability and integrity of the utility system in Alberta.³ The Commission "must be satisfied that the [exemption] would not undermine the ability of [the utility] to provide safe and reliable service at just and reasonable rates."⁴

15. In the context of exemptions pursuant to Section 26(4) of the *Gas Utilities Act*, the Commission has also considered the following non-exhaustive list of factors in determining whether a requested exemption should be granted:

- The operational and regulatory history of the utility.
- The potential effect of the requested exemption on regulatory oversight.
- The duration and scope of the requested exemption.
- Any potential effect on the utility's overall corporate structure (in the case of requests for exemptions from the requirement to seek approval of issuances associated with corporate reorganizations).
- Any objections to the application registered by interveners.
- Other general public interest concerns.

³ Decision 26717-D01-2022: Calgary District Heating Inc., Exemption from Provisions of the Public Utilities Act, Proceeding 26717, March 2, 2022, PDF page 9, paragraph 28, in respect of exemptions under Section 79(1) of the *Public Utilities Act* (which is substantively identical to Section 3(1) of the *Gas Utilities Act*). See 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.

⁴ Decision 21555-D01-2016: Conditional Exemption from Specific Financing and Reporting Requirements, Proceeding 21555, December 6, 2016, PDF pages 9-10, paragraph 24, in respect of exemptions under Section 26(4) of the *Gas Utilities Act* and Section 101(4) of the *Public Utilities Act*.

16. TSU submitted that it is in the public interest to grant TSU either a Section 3 exemption or a Section 26(4) exemption, as doing so will not impact the Commission's mandate to establish just and reasonable rates for Apex and ensure the safety, reliability and integrity of the utility system in Alberta. TSU submitted that the circumstances giving rise to its initial designation as an owner of a utility have changed, such that the reasons for designating TSU are no longer applicable, and that TSU's designation as an owner under Section 26 of the *Gas Utilities Act* is inefficient and creates risks in the operation of its multi-jurisdictional assets.

17. The Commission determined that TSU should be designated as an owner of a utility for the purposes of sections 26 and 27 of the *Gas Utilities Act* and Section 109 of *Public Utilities Act* in Decision 23010-D01-2018.⁵ In that decision, the Commission explained that while the Commission's general practice has been to "designate both the utility itself (as the utility operator or owner of the utility assets) and the direct owner, or parent of the utility," the Commission has not always restricted the designation to the utility operator and its direct parent.⁶ In deciding to depart from its general practice, the Commission emphasized that TSU would be responsible for raising the debt required by the operating utility, Apex and, at that time, TSU did not have a credit rating, had not accessed financial markets to finance the utility operations of Apex, and had not issued shares to the public. The Commission found that, in those circumstances, it was necessary to recommend to the Lieutenant Governor in Council that TSU be designated an owner of a utility under sections 26 and 27 of the *Gas Utilities Act* and Section 109 of the *Public Utilities Act*, "to ensure that there is sufficient oversight for the protection of customers and the integrity of the utility system in Alberta from negative impacts that might result from the company's financial activities."⁷

18. In its application, TSU submitted that its circumstances have changed since being designated in Decision 23010-D01-2018, so that the reasons for its designation no longer apply.⁸ TSU explained that in October 2018, it obtained a BBB (high) credit rating and has maintained this rating for more than five years while growing its investments. TSU also explained that it first accessed financial markets to obtain working capital for its investments, including Apex, in December 2018 and has since accessed the same financial markets five times. TSU also subsequently issued its common shares to the public, following which it was purchased by PSPIB Cycle Investments Inc. in a transaction approved by the Commission.⁹

19. TSU also submitted that, as a diversified energy infrastructure company with multi-jurisdictional holdings, there are inefficiencies inherent in a designation under Section 26 of the *Gas Utilities Act*. TSU submitted that while it has relied on Rule 031: *Conditional Exemption from Specific Financing and Reporting Requirements* to address its Canadian investments working capital needs, it has experienced inefficiencies and the potential for risk¹⁰ in the acquisition of its U.S. assets because, as a designated utility under Section 26 of the *Gas Utilities*

⁵ Decision 23010-D01-2018: AltaGas Utilities Group Inc., Application for the Sale and Transfer of Capital Stock, Proceeding 23010, January 30, 2018.

⁶ Decision 23010-D01-2018, paragraphs 43-44.

⁷ Decision 23010-D01-2018, paragraph 45.

⁸ Exhibit 29096-X0002, application, paragraph 44.

⁹ This transaction was approved by the Commission in Decision 25089-D01-2020: AltaGas Canada Inc. and PSPIB Cycle Investments Inc., Application for Transfer of Shares and Stock, Proceeding 25089, February 18, 2020.

¹⁰ Including regulatory, financial, market access, execution and valuation risk.

Act, it was required to obtain Commission approval of certain cross-guarantees to assist in financing U.S. dollar denominated working and acquisition capital for the U.S. assets.¹¹

20. TSU stressed that the Commission would retain sufficient oversight over Apex because it would continue to be regulated by the Commission, and that the operations of Apex and its ability to obtain capital and operational funding will not be impacted if TSU is granted either of the requested exemptions.¹² TSU noted that granting the requested relief would not impact TSU's current BBB (high) debt rating.¹³

21. With respect to the form of relief requested, TSU submitted that both a Section 3 exemption and a Section 26(4) exemption were in the public interest and would largely eliminate any inefficiencies arising as a result of TSU's Section 26 designation, as well as any associated risks. However, TSU expressed a preference for the broader Section 3 exemption, stating that under a Section 26(4) exemption, it would remain listed as a designated owner of a gas utility in the *Gas Utilities Designation Regulation* and would be subject to periodic review of the designation in accordance with the expiry of any exemption period ordered by the Commission. TSU argued that this would create at least a perception of regulatory risk and execution risk in the investment and financial markets in relation to TSU and its investments.¹⁴

22. The Commission understands that TSU is primarily seeking relief from the operation of Section 26(2) of the *Gas Utilities Act*. The express purpose of Section 26(4) is to provide such relief, and so it is unnecessary for the Commission to resort to the broader Section 3 exemption. Further, it is not clear to the Commission that granting a Section 3 exemption from sections 26(3),¹⁵ 26(4)¹⁶ and 26(5)¹⁷ of the *Gas Utilities Act* is in the public interest, particularly insofar as it may affect the Commission's jurisdiction over TSU in the future. The Commission also is not persuaded by TSU's arguments that a Section 3 exemption is preferable to a Section 26(4) exemption or that TSU will suffer any undue risk as a result of a Section 26(4) exemption. Accordingly, the Commission considers it more appropriate to consider TSU's alternative request for relief.

23. The Commission finds that granting TSU a Section 26(4) exemption from Section 26(2) of the *Gas Utilities Act* is in the public interest and will likely result in benefits to TSU in the operation of its multi-jurisdictional assets. The Commission is satisfied that the circumstances giving rise to TSU's initial Section 26 designation in Decision 23010-D01-2018 have sufficiently changed in the intervening period, so that the Commission no longer requires the same level of oversight to ensure the protection of customers and the integrity of Alberta's utility system. The Commission is satisfied that it will retain sufficient oversight over TSU because it will remain a designated owner of a utility under Section 27 of the *Gas Utilities Act* and Section 109 of the *Public Utilities Act*, and because its subsidiary companies TriSummit Group, TriSummit Holdings and Apex will remain designated under sections 26, 27 and 109. Importantly, Apex, the utility operator itself, will remain regulated by the Commission. The Commission therefore finds

¹¹ Exhibit 29096-X0002, application, paragraph 44.

¹² Exhibit 29096-X0002, application, paragraph 47.

¹³ Exhibit 29096-X0002, application, paragraph 46.

¹⁴ Exhibit 29096-X0002, application, paragraph 54.

¹⁵ Section 26(3) lists certain transactions for which the Commission's approval is not required.

¹⁶ Section 26(4) gives the Commission jurisdiction to grant exemptions from the requirement to obtain Commission approval prior to conducting the transactions specified in Section 26(2).

¹⁷ Section 26(5) provides that when a declaration is made by the Commission under Section 26(4), certain transactions made prior to the declaration are no longer void or in contravention of the *Gas Utilities Act*.

that granting TSU an exemption from Section 26(2) will not undermine the ability of the utility to provide safe and reliable service at just and reasonable rates.

5 Order

24. It is hereby ordered that, under Section 26(4) of the *Gas Utilities Act*:

- (1) Section 26(2) of the *Gas Utilities Act* does not apply to TriSummit Utilities Inc. unless and until this order is varied or rescinded by the Commission.
- (2) Nothing in this order shall bind, affect or prejudice the Commission in any way in its consideration of any other matter or question related to TriSummit Utilities Inc.

Dated on August 1, 2024.

Alberta Utilities Commission

(original signed by)

Michael Arthur
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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