



# ENERGY REGULATORY REPORT

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## ALBERTA UTILITIES COMMISSION

### **TriSummit Utilities Inc. De-Designation Under Section 26 of the Gas Utilities Act, Decision 29096-D01-2024**

*Markets – Financial Oversight*

#### Application

TriSummit Utilities Inc. (“TSU”), a Canadian corporation designated as an owner of a gas utility and an owner of a public utility, filed an application with the Alberta Utilities Commission (“AUC”) for an order declaring that ss 26(2) through 26(5) of the *Gas Utilities Act* (“GUA”) do not apply to TSU. Alternatively, TSU requested an AUC order declaring that s 26(2) of the *GUA* does not apply to all applicable transactions or classes of transactions that TSU may undertake.

#### Decision

The AUC granted the alternative relief requested by TSU and declared that s 26(2) of the *GUA* does not apply to TSU unless and until the order is varied or rescinded by the AUC.

#### Pertinent Issues

#### **TSU**

##### *Background*

Through its subsidiary companies TriSummit Utility Group Inc. (“TSG”) and TriSummit Utility Holdings Inc.

(“TS Holdings”), TSU wholly and indirectly owns Apex Utilities Inc. (“AUI”), a natural gas distribution utility operating solely in Alberta. AUI is regulated by the AUC pursuant to the *Alberta Utilities Commission Act* (“AUC Act”), the *GUA* and the *Public Utilities Act* (“PUA”).

##### *Designation*

TSU is a designated owner of a gas utility for the purposes of ss 26 and 27 of the *GUA*, and a designated owner of a public utility for the purposes of s 109 of the *PUA*. AUI, TSG and TS Holdings are also designated owners of a gas and public utility pursuant to the regulations enacted under the *GUA* and *PUA*.

##### *Relief Requested*

TSU requested under s 3(1)(c) of the *GUA* that the AUC order de-designate TSU under s 26(1) of the *GUA* so that ss 26(2) through 26(5) of the *GUA* do not apply to TSU.

S 26(2) of the *GUA* requires that designated owners of gas utilities obtain AUC approval prior to issuing debt or equity (or consummating a number of other transactions) or the transactions are void. S 26(3) of the *GUA* lists certain financial transactions for which the AUC’s approval is not required, and s 26(5) of the *GUA* provides that when a declaration is made by the AUC under s 26(4) of the *GUA*, certain transactions



## AUC re De-Designation under GUA

made prior to the declaration are no longer void or in contravention of the *GUA*.

In the alternative, TSU requested, pursuant to s 26(4) of the *GUA*, an AUC order declaring that s 26(2) of the *GUA* does not apply to all applicable transactions or classes of transactions that TSU may undertake. This makes the alternative relief narrower compared to the main one.

### AUC Decision

#### *Legal Test*

When deciding whether to grant an exemption pursuant to either s 3 or s 26(4) of the *GUA*, the AUC considers whether the requested exemption is in the public interest. The public interest test requires consideration of the AUC's dual mandate to establish just and reasonable rates, and to ensure the safety, reliability and integrity of the utility system in Alberta. The AUC 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.

In the context of exemptions pursuant to s 26(4) of the *GUA*, the AUC also considers 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;
- any objections to the application registered by interveners; and
- other general public interest concerns.

#### *Main Relief*

The AUC understood that TSU primarily sought relief from the operation of s 26(2) of the *GUA*. As a result, the AUC held that, since the express purpose of 26(4) of the *GUA* was to provide such relief, it was

unnecessary for the AUC to resort to the broader s 3 of the *GUA* exemption.

Additionally, the AUC was not clear that granting a s 3 *GUA* exemption from ss 26(3), 26(4) and 26(5) of the *GUA* was in the public interest because it may affect the AUC's jurisdiction over TSU in the future. The AUC was not persuaded by TSU's arguments that a s 3 *GUA* exemption is preferable to a s 26(4) of the *GUA* exemption or that TSU will suffer any undue risk as a result of a s 26(4) *GUA* exemption.

#### *Alternative Relief*

Accordingly, the AUC considered TSU's alternative request for relief and found that granting TSU a s 26(4) *GUA* exemption from s 26(2) *GUA* was in the public interest and that it would likely result in benefits to TSU in the operation of its multi-jurisdictional assets. The AUC was satisfied that the circumstances giving rise to TSU's initial s 26 *GUA* designation as an owner of a gas utility have sufficiently changed so that the AUC no longer requires the same level of oversight to ensure the protection of customers and the integrity of Alberta's utility system.

The AUC was also satisfied that it will retain sufficient oversight over TSU because TSU will remain a designated owner of a utility under s 27 *GUA* and s 109 *PUA*, and because its subsidiary companies TSG, TS Holdings and AUI will also remain designated under ss 26 and 27 of the *GUA* and 109 of the *PUA*. Finally, AUI, the utility operator itself, will remain regulated by the AUC.

Accordingly, the AUC found that granting TSU an exemption from s 26(2) of the *GUA* will not undermine the ability of the utility to provide safe and reliable service at just and reasonable rates.