

1984 BILL 76

Second Session, 20th Legislature, 33 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 76

UTILITIES STATUTES AMENDMENT ACT, 1984

MR. McPHERSON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 76
Mr. McPherson

BILL 76

1984

UTILITIES STATUTES AMENDMENT ACT, 1984

(Assented to , 1984)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Gas Utilities Act

1(1) The Gas Utilities Act is amended by this section.

(2) Section 25 is amended

(a) by repealing subsection (1)(e), (f), (g) and (h);

(b) by repealing subsection (2).

Explanatory Notes

Gas Utilities Act

1(1) This section will amend chapter G-4 of the Revised Statutes of Alberta 1980.

(2) Section 25 presently reads in part:

25(1) No owner of a gas utility shall

(e) issue any

(i) of its shares or stock, or

(ii) bonds or other evidences of indebtedness, payable in more than one year from the date of them,

unless it has first satisfied the Board that the proposed issue is to be made in accordance with law and obtained the approval of the Board of the purposes of the issue and an order of the Board authorizing the issue,

(f) capitalize

(i) its right to exist as a corporation,

(ii) any right, franchise or privilege in excess of the amount actually paid to the Government or any municipality as the consideration for it, exclusive of any tax or annual charge, or

(iii) any contract for consolidation, amalgamation or merger,

(g) without the approval of the Board, capitalize any lease, or

(h) without the approval of the Board,

(i) sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part thereof, or

(ii) merge or consolidate its property, franchises, privileges or rights, or any part thereof, with that of any other owner of a gas utility or public utility within the meaning of the Public Utilities Board Act,

(3) *The following is added after section 25:*

25.1(1) The Lieutenant Governor in Council may by regulation designate those owners of gas utilities to which this section and section 26 apply.

(2) No owner of a gas utility designated under subsection (1) shall

(a) issue any

(i) of its shares or stock, or

(ii) bonds or other evidences of indebtedness, payable in more than one year from the date of them,

unless it has first satisfied the Board that the proposed issue is to be made in accordance with law and has obtained the approval of the Board for the purposes of the issue and an order of the Board authorizing the issue,

(b) capitalize

(i) its right to exist as a corporation,

(ii) a right, franchise or privilege in excess of the amount actually paid to the Government or a municipality as the consideration therefor, exclusive of any tax or annual charge, or

(iii) a contract for consolidation, amalgamation or merger,

(c) without the approval of the Board, capitalize any lease, or

and every sale, lease, mortgage, disposition, encumbrance, merger or consolidation made in contravention of this clause is void and of no effect, but nothing in this clause shall be construed to prevent in any way the sale, lease or other disposition of any of the property of any owner of a gas utility in the ordinary course of his business.

(2) Notwithstanding subsection (1), the approval, authority, permission or consent of the Board is not required in or with respect to

(a) the issue of any shares of its capital stock by an owner of a gas utility under the exercise of any optional right of conversion, attaching to any shares, stocks, bonds, debentures, debenture stock or other evidence of indebtedness, the issue of which has previously been approved by the Board or was not required to be approved by the Board by reason of an existing declaration made under section 3,

(b) a right of entry, sale, disposition or other proceedings for the enforcement of a mortgage or charge created by trust deed or other instrument or security, in the enforcement of, or pursuant to, the security thereby constituted or in the exercise of the rights or remedies thereby granted or otherwise available at law, if that trust deed or other instrument or security was approved or authorized by the Board or was not required to be approved or authorized by the Board by reason of an existing declaration made under section 3, or

(c) the declaration or issuance of a stock dividend by an owner of a gas utility.

(d) without the approval of the Board,

(i) sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part thereof, or

(ii) merge or consolidate its property, franchises, privileges or rights, or any part thereof,

and a sale, lease, mortgage, disposition, encumbrance, merger or consolidation made in contravention of this clause is void, but nothing in this clause shall be construed to prevent in any way the sale, lease, mortgage, disposition, encumbrance, merger or consolidation of any of the property of an owner of a gas utility designated under subsection (1) in the ordinary course of his business.

(3) Notwithstanding subsection (2), the approval, authority, permission or consent of the Board is not required in or with respect to

(a) the issue of any shares of its capital stock by an owner of a gas utility under the exercise of an optional right of conversion attaching to any shares, stocks, bonds, debentures, debenture stock or other evidence of indebtedness the issue of which has previously been approved by the Board or was not required to be approved by the Board by reason of an existing declaration made under subsection (4),

(b) a right of entry, sale, disposition or other proceedings for the enforcement of a mortgage or charge created by trust deed or other instrument or security, in the enforcement of, or pursuant to, the security thereby constituted or in the exercise of the rights or remedies thereby granted or otherwise available at law, if the trust deed or other instrument or security was approved or authorized by the Board or was not required to be approved or authorized by the Board by reason of an existing declaration made under subsection (4), or

(c) the declaration or issuance of a stock dividend by an owner of a gas utility designated under subsection (1).

(4) The Board, 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 subsection (2) or any part thereof does not apply with respect to any transaction or class of transactions specified in the declaration.

(5) Where a declaration is made under subsection (4) in respect of a transaction entered into before the making of the declaration, the transaction,

(a) in the case of a transaction under subsection (2)(d), is deemed to be no longer void and to have been in force and effect from the date of the transaction, and

(b) in the case of a transaction under subsection (2)(a), (b) or (c), is deemed not to have been in contravention of that subsection,

except that the declaration does not affect any other rights that have accrued prior to the declaration.

(4) *Section 26(1) is repealed and the following is substituted:*

26(1) Unless authorized to do so by an order of the Board, the owner of a gas utility designated under section 25.1(1) shall not sell or make or permit to be made on its books any transfer of any share or shares of its capital stock if the sale or transfer, by itself or in connection with other previous sales or transfers, would result in the vesting in the other corporation of more than 50% of its outstanding capital stock.

Public Utilities Board Act

2(1) The Public Utilities Board Act is amended by this section.

(2) *Section 4(3) is repealed and the following is substituted:*

(3) The chairman may designate a member to conduct any sitting of the Board.

(3) *Section 5(5) is repealed and the following is substituted:*

(5) The chairman may designate a member of a division of the Board to conduct any sitting of the division.

(4) *Section 8 is amended by adding the following after subsection (3):*

(4) The chairman may delegate any power, duty or function conferred or imposed on him by this or any other Act or regulations to any member of the Board.

(5) *The following is added after section 8:*

8.1(1) The Lieutenant Governor in Council may appoint 1 or more members of the Board to be the vice-chairman or vice-chairmen of the Board.

(2) A member appointed under subsection (1) is entitled to hold the position of vice-chairman as long as he continues to be a member of the Board unless he is previously removed from the position of vice-chairman by the Lieutenant Governor in Council.

(4) Section 26(1) presently reads:

26(1) Unless authorized to do so by an order of the Board, the owner of a gas utility incorporated under the laws of Alberta, in this section referred to as the "Alberta company", shall not sell or make or permit to be made on its books any transfer of any share or shares of its capital stock

(a) to any other owner of a gas utility or public utility, within the meaning of the Public Utilities Board Act, or

(b) to any other corporation, however incorporated,

if the result of the sale or transfer, in itself or in connection with other previous sales or transfers, would be to vest in the other corporation more than 50% of the outstanding capital stock of the Alberta company.

Public Utilities Board Act

2(1) This section will amend chapter P-37 of the Revised Statutes of Alberta 1980.

(2) Section 4(3) presently reads:

(3) The chairman may designate a member to preside at any sitting of the Board at which the chairman is not present.

(3) Section 5(5) presently reads:

(5) The chairman may designate a member of a division of the Board to preside at any sitting of the division at which the chairman is not present.

(4) Section 8 presently reads:

8(1) One member of the Board shall be appointed by the Lieutenant Governor in Council to be chairman of the Board.

(2) The member so appointed is entitled to hold the position of chairman so long as he continues to be a member of the Board.

(3) The chairman

(a) is the chief executive officer of the Board, and

(b) subject only to any directions or decisions that are given or made by a resolution of the Board, has the power to act on behalf of the Board in respect of any thing relating to the administrative affairs of the Board.

(5) Vice-chairman or vice-chairmen.

(3) Where an appointment under subsection (1) results in a plurality of vice-chairmen, the Lieutenant Governor in Council may establish an order of precedence by which seniority of vice-chairmen shall be determined.

(4) At any time during which the office of chairman is vacant or the chairman is absent or unable to act as chairman, the vice-chairman or the most senior vice-chairman, according to the order of precedence, who is available shall perform all the duties and functions, and may exercise all the powers, that are by this or any other Act or regulation imposed or conferred on the chairman.

(5) When the vice-chairman referred to in subsection (4) has acted for and in the place of the chairman, it shall be conclusively presumed that he has so acted in the absence or inability of the chairman.

(6) *Section 9(2) is repealed.*

(7) *Section 91 is amended*

(a) by repealing subsection (1)(e), (f), (g) and (h);

(b) by repealing subsection (2).

(6) Section 9(2) presently reads:

(2) When a member not being the chairman has acted for and in the place of the chairman, it shall be conclusively presumed that he has so acted in the absence or disability of the chairman.

(7) Section 91 presently reads in part:

91(1) No owner of a public utility shall

(e) issue any

(i) of its shares or stock, or

(ii) bonds or other evidences of indebtedness, payable in more than one year from the date thereof,

unless it has first satisfied the Board that the proposed issue is to be made in accordance with law and obtained the approval of the Board of the purposes of the issue and an order of the Board authorizing the issue,

(f) capitalize

(i) its rights to exist as a corporation,

(ii) a right, franchise or privilege in excess of the amount actually paid to the Government or a municipality as the consideration therefor, exclusive of any tax or annual charge, or

(iii) a contract for consolidation, amalgamation or merger,

(g) without the approval of the Board, capitalize any lease, or

(h) without the approval of the Board,

(i) sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part thereof, or

(ii) merge or consolidate its property, franchises, privileges or rights, or any part thereof, with that of any other owner of a public utility,

and a sale, lease, mortgage, disposition, encumbrance, merger or consolidation made in contravention of this clause is void, but nothing in this clause shall be construed to prevent in any way the sale, lease or

(8) The following is added after section 91:

91.1(1) The Lieutenant Governor in Council may by regulation designate those owners of public utilities to which this section and section 92 apply.

(2) No owner of a public utility designated under subsection (1) shall

(a) issue any

(i) of its shares or stock, or

(ii) bonds or other evidences of indebtedness, payable in more than one year from the date of them,

unless it has first satisfied the Board that the proposed issue is to be made in accordance with law and has obtained the approval of the Board for the purposes of the issue and an order of the Board authorizing the issue,

(b) capitalize

(i) its right to exist as a corporation,

(ii) a right, franchise or privilege in excess of the amount actually paid to the Government or a municipality as the consideration therefor, exclusive of any tax or annual charge, or

(iii) a contract for consolidation, amalgamation or merger,

(c) without the approval of the Board, capitalize any lease, or

(d) without the approval of the Board,

(i) sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part thereof, or

other disposition of any of the property of an owner of a public utility in the ordinary course of his business.

(2) Notwithstanding subsection (1), the approval, authority, permission or consent of the Board is not required in or with respect to

(a) the issue of any shares of its capital stock by an owner of a public utility under the exercise of an optional right of conversion attaching to any shares, stocks, bonds, debentures, debenture stock or other evidence of indebtedness, the issue of which has previously been approved by the Board or was not required to be approved by the Board by reason of an existing declaration made under section 71,

(b) a right of entry, sale, disposition or other proceedings for the enforcement of a mortgage or charge created by trust deed or other instrument or security, in the enforcement of, or pursuant to, the security thereby constituted or in the exercise of the rights or remedies thereby granted or otherwise available at law, if the trust deed or other instrument or security was approved or authorized by the Board or was not required to be approved or authorized by the Board by reason of an existing declaration made under section 71, or

(c) the declaration or issuance of a stock dividend by an owner of a public utility.

(ii) merge or consolidate its property, franchises, privileges or rights, or any part thereof,

and a sale, lease, mortgage, disposition, encumbrance, merger or consolidation made in contravention of this clause is void, but nothing in this clause shall be construed to prevent in any way the sale, lease, mortgage, disposition, encumbrance, merger or consolidation of any of the property of an owner of a public utility designated under subsection (1) in the ordinary course of his business.

(3) Notwithstanding subsection (2), the approval, authority, permission or consent of the Board is not required in or with respect to

(a) the issue of any shares of its capital stock by an owner of a public utility under the exercise of an optional right of conversion attaching to any shares, stocks, bonds, debentures, debenture stock or other evidence of indebtedness the issue of which has previously been approved by the Board or was not required to be approved by the Board by reason of an existing declaration made under subsection (4),

(b) a right of entry, sale, disposition or other proceedings for the enforcement of a mortgage or charge created by trust deed or other instrument or security, in the enforcement of, or pursuant to, the security thereby constituted or in the exercise of the rights or remedies thereby granted or otherwise available at law, if the trust deed or other instrument or security was approved or authorized by the Board or was not required to be approved or authorized by the Board by reason of an existing declaration made under subsection (4), or

(c) the declaration or issuance of a stock dividend by an owner of a public utility.

(4) The Board, 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 subsection (2) or any part thereof does not apply with respect to any transaction or class of transactions specified in the declaration.

(5) Where a declaration is made under subsection (4) in respect of a transaction entered into before the making of the declaration, the transaction,

(a) in the case of a transaction under subsection (2)(a), (b) or (c), is deemed not to have been in contravention of that section, and

(b) in the case of a transaction under subsection (2)(d), is deemed to be no longer void and to have been in force and effect from the date of the transaction,

except that the declaration does not affect any other rights that have accrued prior to the declaration.

(9) Section 92(1) is repealed and the following is substituted:

92(1) Unless authorized to do so by an order of the Board, the owner of a public utility designated under section 91.1(1) shall not sell or make or permit to be made on its books a transfer of any share of its capital stock if the sale or transfer, in itself or in connection with other previous sales or transfers, would result in the vesting in the other corporation of more than 50% of its outstanding capital stock.

Transitional

3(1) A transaction made before the coming into force of this Act in contravention of

(a) section 25(1)(e), (f) or (g) of the Gas Utilities Act or an earlier similar enactment, or

(b) section 91(1)(e), (f) or (g) of the Public Utilities Board Act or an earlier similar enactment

is deemed not to have been made in contravention thereof.

(2) A sale, lease, mortgage, disposition, encumbrance, merger or consolidation made before the coming into force of this Act in contravention of section 25(1)(h) of the Gas Utilities Act or an earlier similar enactment or section 91(1)(h) of the Public Utilities Board Act or an earlier similar enactment is

(a) deemed not to be void, and

(b) deemed to have been in effect from the date of the sale, lease, mortgage, disposition, encumbrance, merger or consolidation.

Commencement

4 This Act comes into force on Proclamation.

(9) Section 92(1) presently reads:

92(1) Unless authorized to do so by an order of the Board, the owner of a public utility incorporated by or under the laws of Alberta, in this section referred to as the "Alberta company", shall not sell or make or permit to be made on its books a transfer of any share of its capital stock

(a) to any other owner of a public utility, or

(b) to any other corporation, however incorporated,

if the result of the sale or transfer, in itself or in connection with other previous sales or transfers, would be to vest in the other corporation more than 50% of the outstanding capital stock of the Alberta company.

Transitional

3 Transitional.