

1844 (6)

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ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION  
(602) 542-4242

February 26, 1991

Ms. Lisa S. Hamilton, Esq.  
Miller & Holguin  
1060 Century Plaza Towers  
2029 Century Park East  
Los Angeles, California 90067

44-1844(6)

RE: Utilitech, Inc. No-Action Request

Dear Ms. Hamilton:

On the basis of the facts set forth in your letter of January 11, 1991 and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached photocopies of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS  
Director of Securities

DRH:sw

Enclosure

MILLER & HOLGUIN

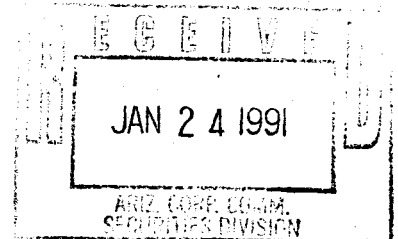
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OF COUNSEL

January 11, 1990



Ms. Sarah Ziskin  
Director of Corporation Finance  
234 North Central Avenue  
Phoenix, AZ 85004

Re: Utilitech, Incorporated

Dear Ms. Ziskind:

We are counsel to Utilitech, Incorporated, a California corporation ("Utilitech"). In connection with our request for a no-action letter for the issuance of securities of Utilitech in a court approved settlement of a class action, the following documents are hereby submitted as set forth and described below:

1. Order dated November 7, 1989 re. dissemination of Notice to class members. This order describes the nature of the claim and the settlement.
2. Notice of Pendency of Class Action and Hearing on Proposed Stipulation.
3. Order approving settlement entered January 19, 1990.
4. Final judgment of January 19, 1990 re. settlement.
5. A check in the amount of \$200 for the filing fee.

Utilitech's settlement of Langford vs. Utilitech et al United States District Court Northern District of California, Case No. C-88-1763 WHO involves the issuance of securities: common stock of Utilitech and warrants to purchase common stock of

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Utilitech (collectively the "Utilitech Securities"). No consideration (other than release of claims) is being given by the class members for the Utilitech Securities. The settlement was determined to be fair, just and equitable pursuant to the Order referenced in Item 3 above. The issuance of Utilitech securities will be issued in accordance with the federal exemption from registration pursuant to Section 3(a)(10) of the Securities Act of 1933, as amended.

3(a)(10) Except with respect to a security exchanged in a case under title 11 of the United States Code, any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval.

This letter is to request a no-action letter supporting our assertion that Section 44-1844(6) apply to the issuance of Utilitech Securities to ten Arizona residents. The section provides as follows:

6. Any transaction or series of transactions incident to a statutory or judicially approved reorganization, merger, triangular merger, consolidation, or sale of assets, incident to a vote by securities holders pursuant to the articles of incorporation, the applicable corporate statute or other controlling statute, partnership agreement or the controlling agreement among securities holders.

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ATTORNEYS AT LAW

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As stated above, the issuance of Utilitech Securities is incident to a judicially approved transaction. Although the transaction may not constitute a reorganization for purposes of state law, it does not appear that public policy interests would necessitate a narrow interpretation of the statute in these facts and circumstances since the settlement has been adjudicated fair, just and equitable. In addition, I was informed by your office that this section has been utilized previously in comparable circumstances.

We appreciate your prompt and expedited review of this matter. We thank you for your courtesy and attention to this matter. If you have any questions or comments, please do not hesitate to contact the undersigned at your convenience.

Upon your receipt, please date stamp the additional cover page of the letter and return to our office in the enclosed, self addressed, stamped envelope.

Very truly yours,

MILLER & HOLGUIN

  
Lisa S. Hamilton

LSH:arl  
2323U  
Enclosures