

IN THE MATTER OF
THE SECURITIES ACT, 1988, S.S. 1988, c. S-42.2
AND
IN THE MATTER OF
IPL ENERGY INC.
AND
FORTIS INC.
AND
PRODUCERS PIPELINES INC.

DECISION

Hearing Held: February 15, 1995

Before:

Saskatchewan Securities Commission

Marcel de la Gorgendiere - Chairperson

Rand Flynn - Commission Member

Appearances:

Ontario Securities Commission

Simon Romano

Ava Yaskiel

Alberta Securities Commission

Glenn Roy

Mark Brown

Saskatchewan Securities Commission

Dean Murrison

Patti Pacholek

IPL Energy Inc.:

Mike Milani, McDougall Ready, Saskatchewan Counsel

Allan Belstedt and David Spencer, Milner Fenerty, Alberta Counsel

F. R. Allan and T. S. Dobin, Osler Hoskin & Harcourt, Ontario Counsel,

Fortis Inc.:

D. Shawn McReynolds and Arthur Shiff, Davies, Ward & Beck, Ontario Counsel

Producers Pipelines Inc.:

Carl Wagner, MacPherson Leslie & Tyerman, Saskatchewan Counsel

James E. A. Turner, Tory Tory DesLauriers & Binnington, Ontario Counsel

Decision dated: March 9, 1995

DECISION

This matter came before the Ontario Securities Commission ("OSC"), the Alberta Securities Commission ("ASC") and Saskatchewan Securities Commissions (the "Commission") and was heard by those commissions (the "Commissions") jointly. There were two applications, one by IPL Energy Inc. ("IPL") requesting an order pursuant to subsection 113(2)(c) of *The Securities Act, 1988, Saskatchewan*, (the "Act") exempting IPL from subsection 103(2) and paragraphs 4 and 5(a) of section 144 of the Act in connection with the take-over bid (the "Bid") dated February 15, 1995 being made by IPL for all issued and outstanding common shares (the "Producers Shares") of Producers Pipelines Inc. ("Producers"). At the termination of the hearing it was the unanimous decision of the Commissions that this application be denied. The reasons for the denial are being issued by the OSC and are adopted by the Commission as forming part of this decision.

Fortis Inc. ("Fortis") in its submission requested a cease trade order for the settlement of any purchases of common shares of Producers made by IPL on February 14, 1995 and to cease trade any subsequent purchases of Producers common shares by IPL other than pursuant to a formal take-over bid complying with the provisions of the Securities Acts of the respective provinces. In the oral decisions given at the hearing it was stated that, as the evidence indicated that any trades on February 14, 1995 were made in Saskatchewan, the OSC and the ASC would make no order in regard to the Fortis application concerning those trades. Those Commissions directed that they be promptly advised if in fact any of such trades had been made in their jurisdictions. In view of the disposition of the IPL application, it was not necessary to deal with the balance of the Fortis application. For its part the Commission found that the trades that were entered into but not settled on February 14, 1995 were not in the public interest and ordered pursuant to section 134 of the Act that the settlement be cease traded. The Commission indicated at that time that it would give written reasons for this decision which it is now doing.

The facts in regard to the February 14, 1995 transaction are briefly as follows:

Fortis had made a take-over bid pursuant to a circular dated January 15, 1995 for all of the outstanding common shares of Producers at a price of \$41.00 or 1.61 common shares of Fortis for each common share with the offer to expire at 5:00 p.m. Regina time, Thursday, February 16, 1995 unless extended.

A number of events occurred on or about February 14, 1995.

1. The board of directors of IPL decided to make an offer to purchase all of the outstanding common shares of Producers at a cash price of \$45.00 per share of 1.614 IPL shares and other possible cash considerations.
2. Early on February 14, 1995 RBC Dominion Securities Inc. ("RBC DS") issued a notice to Canadian investment dealers advising that IPL would acquire Producers common shares on the basis of a five-day settlement at \$45.00 per share over-the-

counter. That notice is attached as Schedule A to the letter of Davies, Ward & Beck ("Davies"), solicitors for Fortis, and filed as Exhibit 2. It was later mentioned in the verbal presentations that approximately 2.6% of the shares of Producers were tendered pursuant to that notice.

3. IPL issued a release advising that it would be issuing its circular offer for all of Producers shares and that the offer would be mailed as of February 15, 1995. The release made reference to applications to the Commissions to take up and pay for the shares tendered "on a date prior to the impending federal budget thereby permitting shareholders to protect the tax status of their shares".

Fortunately for Fortis, the notice by RBC DS was forwarded to Wood Gundy Inc. "(Gundy)" acting as financial adviser to Fortis enabling them to advise Davies as Fortis solicitors, who in turn advised the OSC, and through them the ASC and the Commission. The solicitors were of the opinion that the notice to RBC DS and the trade of any shares pursuant to that notice would constitute a "street sweep" and be illegal during the existence of the bid that required a 21-day take up period. That opinion was the basis of the above mentioned application by Fortis for a cease trade.

Section 104(1) of the Act provides , subject to the regulations, that its provisions apply to every take-over bid and issuer bid. Section 104(3) provides that the offeror shall allow at least 21 days from the date of the bid during which securities may be deposited pursuant to the bid and Section 104(4) provides that the offeror shall not take up any securities deposited pursuant to the bid until the expiration of 21 days from the date of the bid. The offer conveyed by RBC DS did not comply with these provisions in that it was not restricted in any way. No limit was placed on the number of shares to be purchased. The only conditions were as to price and a five-day settlement date, and for an increase in the price in certain circumstances which indicate obvious awareness of the existing Fortis bid and other potential bids. There is nothing to suggest a limitation to less than 20% of aggregate of the class of shares subject to the offer. It could reasonably be interpreted as a take-over bid as defined in section 98(1)(j). Further, it could not be presumed to be a permitted purchase of less than 5% of shares as the exemptions in section 102 of the Act would not apply because all such purchases must be made on an exchange and the Producers shares were-not listed on any exchange, and in any event the offer was not by its terms limited to 5% of the Producers common shares.

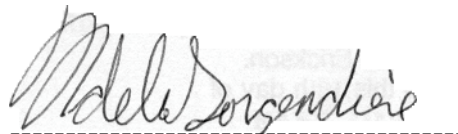
The provisions referred to in section 104 requiring a 21-day bid period and forbidding the offeror from taking up any securities until the expiration of the 21 days together with the provision of section 104(5) allowing the person who has deposited securities pursuant to a bid to withdraw at any time before the expiration of the bid are designed deliberately to enhance public protection. It allows shareholders a reasonable time to peruse all of the relevant material in the director's circular and in the offer. Some might consider that it also ensures the opportunity for an auction process to commence with competitive bids. In any event the first reason is sufficient to justify the reasonableness of the provision and to avoid

shortening it unless some significant other factor exists that would benefit the offerees without prejudice to their comprehension of the bid.

There is some question as to whether the notice of RBC DS was not in the correct form intended by the offeror company. There is no need to go into that discussion in this particular case. We are dealing with the result of what happened and whether that result should be continued. Clearly, it is not reasonable to tolerate the continued existence of any offer to effect immediate purchases coupled with a bid. At the hearing, counsel for IPL made no significant attempt to justify what had occurred. In fact, there was an offer to grant rescission to the shareholders tendering to the offer on February 14, 1995 if the remainder of the application of IPL was granted. It was not granted for reasons that are issued by the OSC with our concurrence.

The result is that the trading pursuant to the RBC DS notice of February 14, 1995 was cease traded as not being in the public interest. The Commission holds that the completion of any trades pursuant to the February 14th offer through RBC DS is not in the public interest in that it is contrary to section 104 of the Act and thus illegal and should therefore not be allowed to come to fruition. Secondly, for reasons stated it is clearly in the public interest to require the 21-day period for consideration of the bid. There was no reason advanced that warranted an abridgement of the normal bid period in the face of the two existing bids other than the desirability of shortening the take-up period because of perceived tax reasons related to possible budget changes. Particulars for the reason it was not accepted as sufficient are stated on pages 10 and 11I of the OSC decision. As a result, the Commission ordered the cease trade of the settlement of the shares tendered in accordance with the February 14, 1995 offer until further order.

DATED at the City of Regina, in the Province of Saskatchewan, this 9th day of March, 1995.



Marcel de la Gorgendiere, Q.C.

Chairman