



# AUC

Alberta Utilities Commission

## **ATCO Gas and Pipelines Ltd.**

**Issuance of 4.085 Per Cent Debenture and  
4.094 Per Cent Debenture**

**December 22, 2014**



**The Alberta Utilities Commission**

Decision 2014-372: ATCO Gas and Pipelines Ltd.

Issuance of 4.085 Per Cent Debenture and 4.094 Per Cent Debenture

Application nos. 1610974 and 1610975

Proceeding No. 3503

December 22, 2014

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## **1 Introduction**

1. On October 31, 2014, ATCO Gas and Pipelines Ltd. (AGPL) filed two applications (applications) with the Alberta Utilities Commission (AUC or Commission) seeking approval to issue long-term debt to its parent company, CU Inc., in the aggregate principal amount of \$215,000,000. More specifically, AGPL requested approval for the following debentures:

- (a) \$195,000,000 principal amount 4.085 per cent debenture due September 2, 2044;<sup>1</sup>
- (b) \$20,000,000 principal amount 4.094 per cent debenture due October 19, 2054.<sup>2</sup>

2. The Commission decided to process the applications under one proceeding to expedite the review process.

3. On November 4, 2014, the Commission issued a notice of application advising interested parties to file a statement of intent to participate to the Commission no later than November 17, 2014. No statements of intent to participate were filed.

4. After reviewing the applications, the Commission found that no additional information was required to make a determination with respect to the applications. The Commission considers the record of this proceeding to have closed on November 17, 2014.

## **2 Background**

5. AGPL is the owner of a public utility to which Section 26(2)(a) of the *Gas Utilities Act*, RSA 2000, c. G-5 applies. Section 26(2)(a) of the *Gas Utilities Act* states:

(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,

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<sup>1</sup> Exhibit No. 4, Application No. 1610975.

<sup>2</sup> Exhibit No. 1, Application No. 1610974.

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

6. Consequently, AGPL is required to obtain approval from the Commission before issuing any bonds or other evidences of indebtedness for terms greater than one year.

### 3 Details of the applications

7. On September 5, 2014, CU Inc. completed a public offering of \$100.00 debentures for an aggregate principal amount of \$1,000,000,000. These debentures had a coupon rate of interest of 4.085 per cent and a maturity date of September 2, 2044.<sup>3</sup>

8. On October 17, 2014, CU Inc. completed a further public offering of \$100.00 debentures for an aggregate principal amount of \$200,000,000. These debentures had a coupon rate of 4.094 per cent and a maturity date of October 19, 2054.<sup>4</sup>

9. In the applications, AGPL indicated that the debenture issuances made by CU Inc. were in compliance with Order U99115<sup>5</sup> and Decision U99118<sup>6</sup> of the Alberta Energy and Utilities Board, which exempts CU Inc. from the requirement to obtain the approval of the Commission prior to issuing securities in accordance with sections 25.1(2), 27(a), 27(c), 27(d), 27(e) and 36 of the *Gas Utilities Act*.

10. AGPL submitted that all proceeds from the sale of the debentures were subsequently advanced by CU Inc. to ATCO Electric Ltd. and AGPL, subject to the companies' assumption of their pro rata share of the fees and expenses paid by CU Inc. for the issuance of the debentures.

11. CU Inc. advanced \$195,000,000 of the proceeds from the sale of the 4.085 percent debentures and \$20,000,000 of the proceeds from the sale of the 4.094 per cent debentures to AGPL on September 5, 2014 and October 17, 2014, respectively. In accordance with its established practice of "mirroring" debt issued by its parent company, AGPL now requests that the Commission grant approval for it to issue the debentures to CU Inc. having maturity dates and coupon rates identical to those originally issued by CU Inc. in consideration for its receipt of the above referenced funds.

12. The estimated net proceeds arising from the proposed sale of the debentures to CU Inc. will be approximately \$213,700,000, after deduction of the fees and expenses incurred in connection with their issuance. AGPL further submitted that it would be allocating \$84,480,000 of the proceeds of the sale of debentures to the ATCO Pipelines division and \$129,220,000 of the proceeds of the sale of debentures to the ATCO Gas division of the corporation, with all net

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<sup>3</sup> Exhibit No. 4, PDF page 3.

<sup>4</sup> Exhibit No. 1, PDF page 3.

<sup>5</sup> Order U99115: CU Inc., Application Regarding Exemption from Certain Sections of the Public Utilities Board Act and the Gas Utilities Act, Application 990182, File 6640-179, November 23, 1999.

<sup>6</sup> Decision U99118: CU Inc., Variance of the Order Approved as Part of Decision U99115 dated 23 November 1999, Application No. 990182, File No. 6640-179, December 21, 1999.

proceeds being used to finance capital expenditures, repay existing indebtedness and to meet other general corporate needs.<sup>7 8</sup>

13. AGPL confirmed that the proposed issuance of the debentures will have no effect on the control of AGPL or on the voting power related to the shares of AGPL.

14. In the affidavits accompanying each of the applications, AGPL attached, as exhibits, a resolution of its board of directors authorizing the proposed issuances of the debentures to CU Inc.,<sup>9</sup> the terms and conditions of the debentures,<sup>10</sup> and a schedule showing recent similar issuances of utilities' corporate debt.<sup>11</sup>

15. In the affidavits accompanying each of the applications, AGPL attached, as Exhibit "F," a letter from AGPL's counsel, Bennett Jones LLP, which opines, among other things, that AGPL's proposed issuance of debentures will be undertaken in compliance with the securities laws of the province of Alberta.

16. AGPL submitted that the issuance of the debentures that it seeks approval for will, if permitted, help it maintain its approved capital structure at a common equity ratio of 38 per cent for its ATCO Pipelines division and 39 per cent for its ATCO Gas division, as approved in Decision 2011-474.<sup>12</sup> AGLP provided a forecast of its pro forma capital structure, following issuance of the applied-for debentures, in Exhibit "E" to the affidavits accompanying the applications.

**Table 1. ATCO Gas pro forma capital structure after the proposed debenture issue**

	June 30, 2014, actual		June 30, 2014, as adjusted*	
	Amount (\$000,000)	%	Amount (\$000,000)	%
Long-term debt	1,099.2	55.0	1,229.2	58.0
Preferred shares	89.6	4.0	89.6	4.0
Common equity	811.2	41.0	811.2	38.0
Total	1,999.9	100.0	2,129.9	100.0
*After giving effect to the issuance of the applied-for shares and the debentures				

<sup>7</sup> Exhibit No. 4, PDF page 4.

<sup>8</sup> Exhibit No. 1, PDF page 4.

<sup>9</sup> Exhibit nos. 1 and 4, Exhibit B, PDF page 22.

<sup>10</sup> Exhibit nos. 1 and 4, Exhibit C, PDF page 25.

<sup>11</sup> Exhibit nos. 1 and 4, Exhibit D, PDF page 47.

<sup>12</sup> Decision 2011-474: 2011 Generic Cost of Capital, Application No. 1606549, Proceeding ID No. 833, December 8, 2011.

**Table 2. ATCO Pipelines pro forma capital structure after the proposed debenture issue**

	June 30, 2014, actual		June 30, 2014, as adjusted <sup>1</sup>	
	Amount (\$000,000)	%	Amount (\$000,000)	%
Long-term debt	562.0	57.0	647.0	61.0
Preferred shares	36.2	4.0	36.0	4.0
Common equity	383.0	39.0	383.0	36.0
Total	981.0	100.0	1,066.0	100.0
<sup>1</sup> After giving effect to the issuance of the applied-for shares and the debentures				

### 3.1 AGPL's utilization of funds

17. In the applications, AGPL described the manner in which its ATCO Gas and ATCO Pipelines divisions will utilize the funds obtained from the proposed debenture issuance.

18. ATCO Gas will use the net proceeds from financings for the following purposes:

- to help maintain capital structure at the level established in Decision 2011-474
- to fund various capital projects, including \$137,192,000 of capital additions included in ATCO Gas' 2014-2015 capital tracker application and 2013 capital tracker refiling and true-up application<sup>13</sup>

19. ATCO Pipelines will use the net proceeds from financings for the following purposes:

- to help maintain capital structure at the level established in Decision 2011-474
- to fund various transmission capital projects, including \$132,591,000 of capital expenditures included in ATCO Pipelines' 2013-2014 general rate application<sup>14</sup>

## 4 Commission findings

20. In determining whether to grant AGPL's applications, the Commission must consider Section 26(2)(a) of the *Gas Utilities Act*. The primary focus of this review is to determine (a) whether the proposed issuances are to be made in accordance with law and (b) whether the Commission approves the purpose of the issue.

21. In determining whether a debt issuance will be made in accordance with law, the Commission is primarily focused on whether the proposed issuance meets the corporate and securities law requirements pertaining to such transactions. The Commission typically requests and relies upon the opinion of the applicant's legal counsel to confirm that the utility is authorized to undertake the issuance of the proposed debenture and that the issuance of the debenture will be undertaken in compliance with applicable laws. Based on the opinions provided by AGPL's legal counsel, Bennett Jones LLP, dated October 30, 2014, the Commission

<sup>13</sup> Application No. 1610634, Proceeding No. 3267.

<sup>14</sup> Application No. 1609158, Proceeding No. 2322.



is satisfied that issuances of the debentures will be made in accordance with Alberta securities laws.

22. The Commission also requires that utilities provide sufficient information for consideration of the purpose of the debt issuance, in accordance with the minimum filing requirements set out in Bulletin 2014-09.<sup>15</sup> In reviewing the applications, the Commission notes that a list of debt facilities which these debentures will refinance was not provided as specified in the minimum filing requirements. Accordingly, it directs that AGPL provide this information in its future debt applications.

23. However, the Commission is nonetheless satisfied, based on AGPL's submissions in this proceeding, that proceeds from issuances of the debentures will be used to maintain its approved capital structure, finance capital expenditures and to meet other general corporate needs. The Commission accepts these purposes as being valid and consequently approves AGPL's applications for approval of the debenture issuances proposed therein, as filed.

## 5 Order

24. It is hereby ordered that:

- (1) In accordance with the findings in this decision, ATCO Gas and Pipelines Ltd. is authorized pursuant to Section 26(2)(a) of the *Gas Utilities Act* to issue to CU Inc., its parent company:
  - (a) a 4.085 per cent debenture in the principal amount of \$195,000,000 with a maturity date of September 2, 2044;
  - (b) a 4.094 per cent debenture in the principal amount of \$20,000,000 with a maturity date of October 19, 2054.

Dated on December 22, 2014.

### The Alberta Utilities Commission

*(original signed by)*

Bill Lyttle  
Commission Member

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<sup>15</sup> Bulletin 2014-09: Streamlining the debt application process for utilities, April 30, 2014.



## Appendix 1 – Proceeding participants

Name of organization (abbreviation)  
counsel or representative

ATCO Gas and Pipelines Ltd. (AGPL)  
D. Connolly  
C. Warkentin

The Alberta Utilities Commission

Commission Panel  
B. Lyttle, Commission Member

Commission Staff  
R. Finn (Commission counsel)  
E. von Engelbrechten (Commission counsel)  
M. Kopp-van Egteren  
N. Mahbub

## Appendix 2 – Summary of Commission directions

This section is provided for the convenience of readers. In the event of any difference between the directions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail.

1. The Commission also requires that utilities provide sufficient information for consideration of the purpose of the debt issuance, in accordance with the minimum filing requirements set out in Bulletin 2014-09. In reviewing the applications, the Commission notes that a list of debt facilities which these debentures will refinance was not provided as specified in the minimum filing requirements. Accordingly, it directs that AGPL provide this information in its future debt applications..... Paragraph 22