



## **AltaGas Utilities Inc.**

### **2015 Debenture and Common Shares Issue Applications**

**August 25, 2015**

**Alberta Utilities Commission**

Decision 20590-D01-2015

AltaGas Utilities Inc.

2015 Debenture and Common Shares Issue Applications

Proceeding 20590

August 25, 2015

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## Contents

<b>1</b>	<b>Introduction.....</b>	<b>1</b>
<b>2</b>	<b>Background .....</b>	<b>2</b>
<b>3</b>	<b>Discussion of issues within the debenture application.....</b>	<b>2</b>
<b>4</b>	<b>Discussion of issues within the common shares issue application .....</b>	<b>5</b>
<b>5</b>	<b>Order .....</b>	<b>7</b>
	<b>Appendix 1 – Proceeding participants .....</b>	<b>9</b>
	<b>Appendix 2 – Summary of Commission directions.....</b>	<b>10</b>

## List of tables

<b>Table 1.</b>	<b>AUI pro forma capital structure after the proposed debenture and share issue..</b>	<b>6</b>
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## **1 Introduction**

1. On July 6, 2015, AltaGas Utilities Inc. (AUI) filed two applications with the Alberta Utilities Commission requesting approval of the issuance of debentures and common shares. AUI requested Commission approval by no later than August 31, 2015, so that the interest payment dates for the applied-for debt issuance could mirror the interest payment dates of the most immediately preceding 10-year term debt issuance by AUI's ultimate parent, AltaGas Ltd. (AL).

2. On July 8, 2015, the Commission issued a notice of application that required interested parties to submit a statement of intent to participate (SIP) by July 15, 2015. In their SIPs, parties were to provide a description of their interest in the proceeding, an explanation of their position including information in support of the position, and submissions as to whether further process is required.

3. On July 16, 2015, the Commission received a SIP from the Consumers' Coalition of Alberta (CCA). The CCA requested the opportunity to test the application with a process of information requests before commenting on whether or not it would be objecting to the application. The CCA indicated a preliminary intention to file information requests, review responses, and file argument and reply argument.

4. The Commission determined that the application will be considered by way of a basic written process proceeding and established the following process schedule:

<b>Process step</b>	<b>Deadline</b>
Information requests to AUI	Monday, July 27, 2015, 4 p.m.
Responses to information requests by AUI	Tuesday, August 4, 2015, 4 p.m.
Submissions on need for additional process steps	Friday, August 7, 2015, noon

5. The Commission did not receive any submissions from participants to this proceeding on the need for further process by the prescribed deadline. On August 10, 2015, correspondence was received from AUI notifying the Commission that, based on its discussions with counsel to the CCA, no additional process steps in the form of argument or reply would be required or requested.

6. Consequently, the Commission considers the close of record for this proceeding to be August 10, 2015.

7. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record of this proceeding, including the evidence and argument provided by each party. Accordingly, references in this decision to

specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter.

## 2 Background

8. AUI is the owner of a gas 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 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 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, ...

9. Consequently, AUI is required to obtain approval from the Commission before issuing any bonds or other forms of indebtedness for terms greater than one year or before issuing any shares or stock.

## 3 Discussion of issues within the debenture application

10. In the current AUI debenture application, AUI has requested an order:

- (i) Approving and authorizing AUI to issue, to AltaGas Utility Holdings Inc. (AUHI), an intercompany debenture in the principal amount of \$15 million, to be issued on August 31, 2015, and maturing on January 15, 2025 (the AUI 2015 Debenture);
- (ii) Approving the purposes of the issue;
- (iii) Approving the issue date of the AUI 2015 Debenture to be dated August 31, 2015;
- (iv) Approving the annual coupon rate of 3.84 per cent per annum and an issue cost of 0.07 per cent per annum; and
- (v) Providing such further and other relief as AUI may request and the AUC may grant in the circumstances.<sup>1</sup>

11. AUI provided an affidavit from an officer of AUHI and a director of AUI in support of the debenture application.

12. AUI submitted that the net proceeds from the issuance of the AUI 2015 Debenture would be used to finance AUI's 2015 capital expenditures, for working capital requirements, to maintain an appropriate capital structure, and for general corporate purposes.<sup>2</sup>

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<sup>1</sup> Exhibit 20590-X0001, debenture application, page 1.

13. AUI finances primarily with long-term debt facilities so that its financings more closely align with the long-term nature of utility assets.<sup>3</sup> It has also been AUI's practice to obtain long-term debt financing from its ultimate corporate parent, AL, through its direct corporate parent, AUHI.<sup>4</sup> AUI noted that this is consistent with past Commission directions in Decision 2009-176,<sup>5</sup> Decision 2012-147,<sup>6</sup> and Decision 2014-057.<sup>7 8</sup>

14. According to the directive established by the AUC in Decision 2009-176 when AUI obtains intercompany debt financing, the rates for debt incurred by the ultimate corporate parent should be applied to the debt of AUI. Therefore, in compliance with the AUC's directive, AUI determined that it will borrow intercompany debt at the same annual coupon rate as AL's most recent term debt issuance to the market.<sup>9</sup>

15. AUI submitted that the most recent term debt issuance by AL to the market was dated November 10, 2014, and consisted of a \$300 million medium-term note (MTN) at a coupon rate of 3.84 per cent with a maturity date of January 15, 2025 (the AL \$300 million 10-year MTN).<sup>10</sup> Consistent with the directives in Decision 2009-176, the annual coupon rate, issue costs and the maturity date of the AUI 2012 Debenture are the same as the AL \$300 million 10-year MTN.

16. AUI proposed the annual issue costs for the AUI 2015 Debenture to be 0.07 per cent per annum and stated in its application that the calculations for the issue costs are consistent with the Commission direction given in Decision 2012-091.<sup>11</sup> The 0.07 per cent is the AUI pro rata allocation of the estimated issuance cost incurred by AL for the issuance of its \$300 million 10-year MTN.<sup>12</sup>

17. Annual coupon and issue costs for the AUI 2015 Debenture are proposed by AUI to be calculated and payable semi-annually. The first interest payment date would be January 15, 2016, which will mirror the interest payment dates of the AL \$300 million 10-year MTN. In addition to the foregoing calculations, contained in Exhibit B to the application, the following were also included with the affidavit to the application:

- Exhibit A in Schedule A: the form of the AUI 2015 Debenture which, among other things, sets forth and specifies the terms and conditions upon which the debenture is to be issued and held and the rights of AL and AUI.
- Exhibit C: a copy of the AL Pricing Supplement, the Prospectus Supplement and Base Shelf Prospectus for the AL \$300 million 10-year MTN.

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<sup>2</sup> Exhibit 20590-X0001, debenture application, Affidavit of Peter Karl, page 5, paragraph 28.

<sup>3</sup> Exhibit 20590-X0001, debenture application, Affidavit of Peter Karl, page 3, paragraph 20.

<sup>4</sup> Exhibit 20590-X0001, debenture application, Affidavit of Peter Karl, page 2, paragraph 13.

<sup>5</sup> Decision 2009-176: AltaGas Utilities Inc., 2008-2009 General Rate Application Phase I, Proceeding 88, Application 1579247-1, October 29, 2009, page 80, paragraph 387.

<sup>6</sup> Decision 2012-147: AltaGas Utilities Inc., Application for Approval to Issue a Debenture in the Principal Amount of \$20,000,000, Proceeding 1841, Application 1608354-1, May 31, 2012.

<sup>7</sup> Decision 2014-057: AltaGas Utilities Inc., Application for Approval to Issue a Debenture in the Principal Amount of \$60,000,000, Proceeding 3035, Application 1610264-1, March 11, 2014.

<sup>8</sup> Exhibit 20590-X0011, AUI-CCA-27JUL2015-002(b).

<sup>9</sup> Exhibit 20590-X0001, debenture application, Affidavit of Peter Karl, page 2, paragraph 15.

<sup>10</sup> Exhibit 20590-X0001, debenture application, Affidavit of Peter Karl, page 2, paragraph 17.

<sup>11</sup> Decision 2012-091: AltaGas Utilities Inc., 2010-2012 General Rate Application – Phase I, April 9, 2012, Proceeding 904, Application 1606694-1, April 9, 2012, page 49, paragraph 222.

<sup>12</sup> Exhibit 20590-X0001, debenture application, Affidavit of Peter Karl, page 3, paragraph 22(e).

- Exhibit D: a certified copy of a resolution of the board of directors of AUI passed on July 6, 2015, approving the creation of the AUI 2015 Debenture, subject to obtaining an order of the AUC approving the same.
- Exhibit E: the pro forma capital structure for AUI as prepared for inclusion with AUI's debenture and equity applications.
- Exhibit F: the forecast capital expenditures as per the AUI 2014 capital tracker true-up and 2016-2017 capital tracker application.
- Exhibit G: a legal opinion of MacPherson Leslie & Tyerman LLP, AUI's legal counsel, confirming that the proposed issuance of debt securities is to be made in accordance with the securities law of the Province of Alberta at the time of issuance.

18. In AUI-CCA-2015JUL27-002, the CCA expressed concern that the changes in market conditions between November 2014 and August 2015 could be expected to have a material impact on coupon rates for new debt issuance. The CCA noted that the target overnight rate for the Bank of Canada had decreased from one per cent on November 4, 2014, to 0.50 per cent on July 27, 2015, and that the one-year treasury yields had decreased from 0.98 per cent in November 2014 to 0.67 per cent in June 2015.<sup>13</sup>

19. In response to AUI-CCA-2015JUL27-002, AUI explained its view that under current market conditions, AL anticipates that a new debt issue would have a similar rate to the one issued in November 2014, as the coupon rate for debt issuances is affected by the Bank of Canada bond yield, which has decreased by approximately 0.50 per cent, the corporate bond spreads, which have increased from 0.40 per cent to 0.50 per cent for AUI, and by new issue concessions demanded by the market, which are currently 0.05 per cent to 0.12 per cent. Taken together, AUI stated that these factors would result in a 10-year MTN issued in the current market having a similar coupon rate as the 10-year MTN issued in November 2014.<sup>14</sup>

20. The CCA did not make a submission on the need for further process following the IR responses, and the Commission received correspondence from AUI stating that, based on its discussions with counsel to the CCA, no additional process steps in the form of argument or reply would be required or requested.<sup>15</sup> As a result, no argument was submitted on the issue of changing market conditions and their impact on coupon rates for new debt issuances.

### Commission findings

21. In determining whether to approve the AUI 2015 Debenture, the Commission must consider Section 26(2) of the *Gas Utilities Act* reproduced in paragraph 8 above. This will require Commission determination of (a) whether the proposed issuance is to be made in accordance with law, and (b) whether the Commission is satisfied regarding the purposes of the proposed debt issuance described in the debenture application.

22. In determining whether the proposed debt issuance is to be made in accordance with law, the Commission must be sufficiently assured that appropriate attention and effort is being given

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<sup>13</sup> Exhibit 20590-X0010, AUI-CCA-27JUL2015-002, Preamble.

<sup>14</sup> Exhibit 20590-X0011, AUI-CCA-27JUL2015-002(a).

<sup>15</sup> Exhibit 20590-X0012, AUI letter on further process.



by the issuer to ensure due compliance with applicable corporate and securities law and any other legal requirements pertaining to such transactions. The Commission typically requires and relies upon the opinion of the applicant's Alberta legal counsel to confirm that the public utility is authorized to undertake the issuance of the debt proposed and that the debt issuance is to be made in compliance with applicable laws. Based on the opinion provided by MacPherson Leslie & Tyerman LLP, dated July 6, 2015, the Commission is satisfied that due diligence is being exercised and steps have been taken to ensure that the issuance is to be made in accordance with law.

23. The Commission has reviewed the debenture application and finds that the proposed debt issue under consideration appears to be in the public interest for purposes of replacing existing debt or financing activities that will be used in the operation of the gas utility.

24. The Commission finds that the requirements of Section 26(2)(a) of the *Gas Utilities Act* have been met and approves the purposes of AUI's debt issuance and authorizes its issuance.

25. However, the onus still resides with AUI to demonstrate that the actual debt issuance was obtained prudently. Given the changing market conditions between November 2014 and August 2015, the Commission is concerned that mirroring the coupon rate of the AL \$300 million 10-year MTN to the AUI 2015 Debenture may not be reflective of the market conditions in August 2015. The Commission previously commented on a similar issue in Decision 2012-091, when it stated "The Commission considers that the relevant test associated with interest rates for debentures is an assessment of the prudence of the interest rates at the time that AltaGas received the proceeds, not when AL received the proceeds."<sup>16</sup> Consequently, AUI is directed to discuss the prudence of mirroring the coupon rate incurred by AL for its \$300 million 10-year MTN to the AUI 2015 Debenture in its next cost of service application where the full revenue requirement of the company is considered for rate-setting purposes, whether that be a performance-based regulation rebasing, a full general rate application (GRA) or some other application.

#### **4 Discussion of issues within the common shares issue application**

26. In the AUI 2015 common shares issue application, AUI requested an order:

- (i) Approving and authorizing AUI to issue up to 139,482 of Class A common shares of AUI to AUHI for a maximum aggregate consideration not to exceed \$6 million (the AUI 2015 Shares);
- (ii) Approving the purpose of the issue; and
- (iii) Such further and other relief as AUI may request and the Commission may grant in the circumstances.<sup>17</sup>

27. AUI confirmed that "the proposed issuance of the Shares by the Corporation will have no effect on the control of the Corporation or on the voting power related to the shares of the Corporation."<sup>18</sup>

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<sup>16</sup> Decision 2012-091, paragraph 204.

<sup>17</sup> Exhibit 20590-X0002, common shares issue application, page 1.

28. AUI submitted that, taken together, its issuances of the AUI 2015 Shares and AUI 2015 Debentures will, if permitted, enable it to maintain its approved capital structure at a common equity ratio of 42 per cent, as approved in Decision 2191-D01-2015,<sup>19</sup> the 2013 Generic Cost of Capital Decision.<sup>20</sup> AUI provided a forecast of its pro forma capital structure, following issuance of both the applied-for shares and the debentures in Exhibit C, which is shown in Table 1 below.<sup>21</sup>

**Table 1. AUI pro forma capital structure after the proposed debenture and share issue**

	Actual Mid-year 2014	Forecast Mid-year 2015
<b>Debt</b>		
Long-term (mid-year)	120,000	137,500
<b>Equity</b>		
Share capital (mid-year)	34,122	37,122
Retained earnings (mid-year)	58,030	64,116
Total equity	92,152	101,238
<b>Total debt &amp; equity (mid-year)</b>	<b>212,152</b>	<b>238,738</b>
<b>Equity thickness (mid-year)</b>	<b>43.44%</b>	<b>42.41%</b>

29. In the affidavit accompanying the application, AUI attached the following exhibits:

- Exhibit A: a resolution of its board of directors authorizing the proposed issuances of the AUI 2015 Shares.
- Exhibit B: information on the book value of the AUI 2015 Shares as well as the number of shares to be issued.
- Exhibit C: the pro forma capital structure for AUI as prepared for inclusion with AUI's debenture and equity applications.
- Exhibit D: a legal opinion of MacPherson Leslie & Tyerman LLP, AUI's legal counsel, confirming that the proposed issuance of the AUI 2015 Shares is to be made in accordance with the securities law of the Province of Alberta at the time of issuance.

### Commission findings

30. In determining whether to grant AUI's application, the Commission must consider Section 26(2) of the *Gas Utilities Act*, as reproduced in paragraph 8 above. The primary focus of this review is to determine (a) whether the proposed issuance is to be made in accordance with law, and (b) whether the Commission approves the purpose of the issue.

31. In determining whether an equity 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

<sup>18</sup> Exhibit 20590-X0002, common shares issue application, Affidavit of Peter Karl, page 2, paragraph 15.

<sup>19</sup> Decision 2191-D01-2015: 2013 Generic Cost of Capital, Proceeding 2191, Application 1608918-1, March 23, 2015.

<sup>20</sup> Exhibit 20590-X0002, common shares issue application, Affidavit of Peter Karl, page 2, paragraphs 11-14.

<sup>21</sup> Exhibit 20590-X0002, common shares issue application, Affidavit of Peter Karl, pro forma capital structure.

authorized to undertake the issuance of the proposed shares and that the issuance of the shares will be undertaken in compliance with applicable laws. Based on the opinions provided by AUI's legal counsel, MacPherson Leslie & Tyerman LLP, dated July 6, 2015, the Commission is satisfied that issuances of the applied-for shares will be made in accordance with Alberta securities laws and will be undertaken with proper corporate authority.

32. The Commission also requires that utilities provide sufficient information for consideration of the purpose of the equity issuance, in accordance with the minimum filing requirements set out in Bulletin 2014-09.<sup>22</sup> AUI's filings in respect of the application conformed to the requirements of Bulletin 2014-09.

33. The Commission is satisfied, based on AUI's submissions, that the proceeds from the issuance of the AUI 2015 Shares will be used to maintain AUI's approved capital structure, finance capital expenditures, for working capital requirements, and for other general corporate purposes. The Commission accepts these purposes as being valid.

34. The Commission finds that the requirements of Section 26(2)(a) of the *Gas Utilities Act* have been met and approves the purposes of AUI's share issuance and authorizes its issuance.

## 5 Order

35. It is hereby ordered that:

- (1) In accordance with the findings in this decision, AltaGas Utilities Inc. is authorized pursuant to Section 26(2)(a) of the *Gas Utilities Act* to issue to AltaGas Utility Holdings Inc., its parent company:
  - (a) an intercompany debenture in the principal amount of \$15 million, dated August 31, 2015, and maturing on January 15, 2025, with an issue cost of 0.07 per cent; and
  - (b) 139,482 Class A common shares with a share price of \$43.0161 for each Class A common share, for total aggregate proceeds of \$6 million.

Dated on August 25, 2015.

### Alberta Utilities Commission

(original signed by)

Bill Lyttle  
Commission Member

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<sup>22</sup> Bulletin 2014-09: Streamlining the debt application process for utilities, April 30, 2014.



**Appendix 1 – Proceeding participants**

<b>Name of organization (abbreviation) counsel or representative</b>
AltaGas Utilities Inc. (AUI)
Consumers' Coalition of Alberta (CCA)

Alberta Utilities Commission
Commission panel B. Lyttle, Commission Member
Commission staff E. von Engelbrechten (Commission counsel) C. Runge 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. However, the onus still resides with AUI to demonstrate that the actual debt issuance was obtained prudently. Given the changing market conditions between November 2014 and August 2015, the Commission is concerned that mirroring the coupon rate of the AL \$300 million 10-year MTN to the AUI 2015 Debenture may not be reflective of the market conditions in August 2015. The Commission previously commented on a similar issue in Decision 2012-091, when it stated “The Commission considers that the relevant test associated with interest rates for debentures is an assessment of the prudence of the interest rates at the time that AltaGas received the proceeds, not when AL received the proceeds.” Consequently, AUI is directed to discuss the prudence of mirroring the coupon rate incurred by AL for its \$300 million 10-year MTN to the AUI 2015 Debenture in its next cost of service application where the full revenue requirement of the company is considered for rate-setting purposes, whether that be a performance-based regulation rebasing, a full general rate application (GRA) or some other application. ....  
..... Paragraph 25