



ATCO Gas and Pipelines Ltd.

Issuance of 3.964 Per Cent Debenture

November 3, 2015

Alberta Utilities Commission

Decision 20863-D01-2015

ATCO Gas and Pipelines Ltd.

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Proceeding 20863

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Contents

1	Introduction	1
2	Background	1
3	Details of the applications	2
	3.1 ATCO’s utilization of funds	3
4	Commission findings	4
5	Order	5
	Appendix 1 – Proceeding participants	7

List of tables

Table 1.	ATCO Gas pro forma capital structure after the proposed debenture issue	3
Table 2.	ATCO Pipelines pro forma capital structure after the proposed debenture issue	3

1 Introduction

1. On September 24, 2015, ATCO Gas North, on behalf of ATCO Gas and Pipelines Ltd. (ATCO), filed an application with the Alberta Utilities Commission seeking approval to issue long-term debt to its parent company, CU Inc. ATCO applied to issue a debenture in the aggregate principal amount of \$190,000,000, at 3.964 per cent, due July 27, 2045.¹
2. On September 25, 2015, the Commission issued a notice of application advising interested parties to file a statement of intent to participate to the Commission no later than October 2, 2015. No statements of intent to participate were filed.
3. After reviewing the application, the Commission found that no additional information was required to make a determination with respect to the application. The Commission considers the record of this proceeding to have closed on October 2, 2015.

2 Background

4. ATCO 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,

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 ...

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

¹ Exhibit 20863-X0001.

3 Details of the applications

6. On July 27, 2015, CU Inc. completed a public offering of 4,000,000 debentures, at a price of \$100.00 per debenture, for an aggregate principal amount of \$400,000,000 (the CU debentures). The CU debentures have a coupon rate of interest of 3.964 per cent and a maturity date of July 27, 2045.²

7. In its application, ATCO indicated that the CU debentures were issued in compliance with Order U99115³ and Decision U99118⁴ of the Alberta Energy and Utilities Board. Pursuant to that order and decision, CU Inc. is exempt from the requirement to obtain the approval of the Commission prior to issuing securities which would otherwise be required in accordance with sections 25.1(2), 27(a), 27(c), 27(d), 27(e) and 36 of the *Gas Utilities Act*.

8. ATCO submitted that CU Inc. forwarded the proceeds from the sale of the CU debentures to ATCO and ATCO Electric Ltd. and that this was done subject to the companies' assumption of their pro rata shares of the fees and expenses incurred by CU Inc. for the issuance of the CU debentures. Of the gross proceeds from the sale of the CU debentures, ATCO received \$190,000,000 on July 27, 2015. In consideration for the receipt of these funds from CU Inc., ATCO's application requests that the Commission grant approval for it to issue a debenture to CU Inc. in the principal amount of \$190,000,000 and with an interest rate and maturity date identical to the CU debentures (the ATCO debenture). Should approval be granted, the estimated net proceeds to ATCO are estimated to be approximately \$188,793,500, after accounting for ATCO's pro-rata share of fees and expenses associated with the issuances of the CU debentures and the fees and expenses associated with issuing the ATCO debenture.

9. ATCO further submitted that it would allocate \$99,365,000 of the funds received from CU Inc. to the ATCO Pipelines division of the corporation and \$89,428,500 to the ATCO Gas division. All funds would be used to finance capital expenditures, repay existing indebtedness and to meet other general corporate purposes.⁵

10. ATCO confirmed that the proposed issuance of the ATCO debenture will have no effect on the control of ATCO or on the voting power related to the shares of ATCO.⁶

11. In the affidavit accompanying the application, ATCO attached, as exhibits, a resolution of its board of directors authorizing the proposed issuances of the ATCO debenture to CU Inc.,⁷ the terms and conditions of the ATCO debenture,⁸ and a schedule showing recent similar issuances of corporate debt.⁹

² Exhibit 20863-X0001, PDF page 3.

³ 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.

⁴ Decision U99118: CU Inc., Variance of the Order Approved as Part of Decision U99115 dated 23 November 1999, Application 990182, File 6640-179, December 21, 1999.

⁵ Exhibit 20863-X0001, PDF page 4.

⁶ Exhibit 20863-X0001, PDF page 5.

⁷ Exhibit 20863-X0001, Exhibit B, PDF page 21.

⁸ Exhibit 20863-X0001, Exhibit C, PDF page 24.

⁹ Exhibit 20863-X0001, Exhibit D, PDF page 46.

12. ATCO also attached, as Exhibit F, a letter from ATCO's counsel, Bennett Jones LLP, which opines, among other things, that ATCO's proposed issuance of that ATCO debenture will be undertaken in compliance with the securities laws of the province of Alberta.¹⁰

13. ATCO submitted that the issuance of ATCO debenture will, if permitted, help it maintain the capital structures established for the ATCO Pipelines and ATCO Gas divisions of the corporation as approved in Decision 2191-D01-2015.¹¹ ATCO provided a forecast of its pro forma capital structure following issuance of the ATCO debenture, in Exhibit E to the affidavit accompanying the application.¹²

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

	June 30, 2015, actual		June 30, 2015, as adjusted*	
	Amount (\$000,000)	%	Amount (\$000,000)	%
Long-term debt	1,201.2	56.0	1,291.2	57.0
Preferred shares	89.6	4.0	89.6	4.0
Common equity	868.2	40.0	868.2	39.0
Total	2,158.9	100.0	2,248.9	100.0
*After giving effect to the issuance of the applied-for ATCO debenture				

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

	June 30, 2015, actual		June 30, 2015, as adjusted ¹	
	Amount (\$000,000)	%	Amount (\$000,000)	%
Long-term debt	636.0	58.0	736.0	62.0
Preferred shares	36.0	3.0	36.0	3.0
Common equity	423.0	39.0	423.0	35.0
Total	1,095.0	100.0	1,195.0	100.0
¹ After giving effect to the issuance of the applied-for ATCO debenture				

3.1 ATCO's utilization of funds

14. In the application, ATCO described the manner in which the ATCO Pipelines and ATCO Gas divisions of the corporation will utilize the funds obtained from the proposed debenture issuance.

15. ATCO stated that ATCO Gas would use the funds for the following purposes:

- to help maintain capital structure at the level established in Decision 2191-D01-2015

¹⁰ Exhibit 20863-X0001, PDF page 48.

¹¹ Decision 2191-D01-2015: 2013 Generic Cost of Capital, Proceeding 2191, Application 1608918-1, March 23, 2015.

¹² Exhibit 20863-X0001, Exhibit E, PDF page 47.

- to fund various capital projects, including \$238,205,000 of capital expenditures as included in ATCO Gas's 2016-2017 capital tracker application and 2014 capital tracker true-up application¹³
16. ATCO stated that ATCO Pipelines would use the funds for the following purposes:
- to help maintain capital structure at the level established in Decision 2191-D01-2015
 - to fund various transmission capital projects, including \$309,994,000 of capital expenditures in ATCO Pipelines' 2015-2016 general rate application¹⁴

4 Commission findings

17. In determining whether to grant ATCO's application, 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.

18. 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 opinion provided by ATCO's legal counsel, Bennett Jones LLP, dated September 23, 2015, the Commission is satisfied that issuances of the ATCO debenture will be made in accordance with Alberta securities laws.

19. The Commission is satisfied, based on ATCO's submissions in this proceeding, that proceeds from the issuance of the ATCO debenture will be used to maintain approved capital structures, finance capital expenditures and to meet other general corporate purposes. The Commission accepts these purposes as being valid and consequently approves ATCO's applications for approval of the debenture issuance proposed therein, as filed.

¹³ Proceeding 20604.

¹⁴ Proceeding 3577, Application 1611077-1.

5 Order

20. 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 3.964 per cent debenture in the principal amount of \$190,000,000 with a maturity date of July 27, 2045.

Dated on November 3, 2015.

Alberta Utilities Commission

(original signed by)

Bill Lyttle
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) counsel or representative
ATCO Gas and Pipelines Ltd. (ATCO)

The Alberta Utilities Commission
Commission panel
B. Lyttle, Commission Member
Commission staff
E. von Engelbrechten (Commission counsel)
N. Mahbub
M. Kopp-van Egteren