



ATCO Gas and Pipelines Ltd.

Issuance of 4.211 Per Cent Debenture

December 22, 2015

Alberta Utilities Commission

Decision 20998-D01-2015

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Proceeding 20998

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1 Introduction

1. On November 11, 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 (ATCO debenture), dated October 30, 2015, and in the aggregate principal amount of \$65,000,000, at 4.211 per cent, due October 29, 2055.¹
2. On November 6, 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 November 16, 2015. No statements of intent to participate were filed.
3. After reviewing the application, the Commission determined that additional information was required to make a determination with respect to the application and decided that the application would proceed by way of a basic written process. The Commission issued a round of information requests on November 27, 2015, and ATCO was directed to submit responses on December 3, 2015. The responses were submitted by ATCO on December 11, 2015. ATCO attributed the delay in its submission to internal resource constraints and assured the Commission that it will adjust its internal process to ensure the delay will not occur again.²

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 ...

¹ Exhibit 20998-X0003, paragraph 3.

² Exhibit 20998-X0008.

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.

3 Details of the applications

6. On October 30, 2015, CU Inc. completed a public offering of debentures, at a price of \$100.00 per debenture, for an aggregate principal amount of \$250,000,000 (the CU debentures). The CU debentures have a coupon rate of interest of 4.211 per cent and a maturity date of October 29, 2055.³

7. In its application, ATCO indicated that the CU debentures were issued in compliance with Order U99115⁴ and Decision U99118⁵ 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. on October 30, 2015, 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.⁶ In response to a Commission information request, ATCO confirmed that the ATCO debenture has not been issued to CU Inc. and will only be issued upon approval from the Commission.⁷

9. Of the gross proceeds from the sale of the CU debentures, ATCO received \$65,000,000. In consideration for the receipt of these funds from CU Inc., ATCO's application requested that the Commission grant approval for it to issue the ATCO debenture to CU Inc., dated October 30, 2015, and in the principal amount of \$65,000,000 and with an interest rate and maturity date identical to the CU debentures. Should approval be granted, the net proceeds to ATCO are estimated to be approximately \$64,581,400, 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.⁸

10. ATCO further submitted that it would allocate \$19,871,200 of the funds received from CU Inc. to the ATCO Pipelines division of the corporation and \$44,710,200 to the ATCO Gas division. All funds would be used to finance capital expenditures, repay existing indebtedness and to meet other general corporate purposes.⁹

³ Exhibit 20998-X0003, paragraph 6.

⁴ 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.

⁵ 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.

⁶ Exhibit 20998-X0003, paragraph 6.

⁷ Exhibit 20998-X0008, AGPL-AUC-2015NOV27-001.

⁸ Exhibit 20998-X0003, paragraph 11.

⁹ Ibid.

11. ATCO confirmed that the proposed issuance of the ATCO debenture will have no effect on the control of ATCO nor on the voting power related to the shares of ATCO.¹⁰

12. 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.,¹¹ the terms and conditions of the ATCO debenture,¹² and a schedule showing recent similar issuances of corporate debt.¹³

13. 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.¹⁴

14. 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-D01-2015.¹⁵ 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.¹⁶

Table 1. ATCO Gas and ATCO Pipelines' pro forma capital structures

	Actual 30-Sep-15 ⁽¹⁾		30-Sep-15 As adjusted ⁽²⁾	
	Amount (\$ million)	%	Amount (\$ million)	%
ATCO Gas				
Long-term debt	1,291.2	58	1,336.2	59
Preferred shares	89.6	4	89.6	4
Common equity	842.8	38	842.8	37
Total capital	2,223.6	100	2,268.6	100
ATCO Pipelines				
Long-term debt	736.0	61	756.0	62
Preferred shares	36.0	3	36.0	3
Common equity	434.0	36	434.0	35
Total capital	1,206.0	100	1,226.0	100

Note:

- (1) Includes the issue of the 3.964 per cent debenture in the amount of \$190 million per Decision 20863-D01-2015.¹⁷
(2) After giving effect to the issue of the 4.211 per cent debenture proposed in this application.

¹⁰ Exhibit 20998-X0003, paragraph 15.

¹¹ Exhibit 20998-X0003, Exhibit B, PDF page 21.

¹² Exhibit 20998-X0003, Exhibit C, PDF page 24.

¹³ Exhibit 20998-X0003, Exhibit D, PDF page 46.

¹⁴ Exhibit 20998-X0003, Exhibit F, PDF page 48.

¹⁵ Decision 2191-D01-2015: 2013 Generic Cost of Capital, Proceeding 2191, Application 1608918-1, March 23, 2015.

¹⁶ Exhibit 20998-X0003, Exhibit E, PDF page 47.

¹⁷ Decision 20863-D01-2015: ATCO Gas and Pipelines LTD., Issuance of 3.964 Per Cent Debenture, Proceeding 20863, November 3, 2015.

15. The Commission noted that the pro forma capital structure provided in this application as at September 30, 2015, which included the debentures issued pursuant to Decision 20863-D01-2015, did not match the adjusted pro forma capital structure provided in Proceeding 20863. In response to a Commission information request, ATCO explained the capital structures provided in Proceeding 20863 were based off of June 30, 2015 financials whereas the capital structures provided in this proceeding were based off of September 30, 2015 financials. As a result, the capital structures provided in this proceeding reflected the addition of another quarter of earnings.¹⁸

16. The Commission also enquired about why both ATCO Gas and ATCO Pipelines are moving further away from the approved equity ratio set out in Decision 2191-D01-2015 with the new debenture issuance. ATCO provided the following explanation:

The pro forma capital structure provided in this application is as at September 30, 2015, so it does not include the impact of yet to be realized fourth quarter earnings, including dividends that are expected to be paid by ATCO Gas to CU Inc.

ATCO Gas is forecasting a 2015 equity thickness of 38% and ATCO Pipeline is forecasting a 2015 equity thickness of 37%, both which are consistent with that approved in Decision 2191-D01-2015.¹⁹

3.1 ATCO's utilization of funds

17. In the application, ATCO explained that both ATCO Gas and ATCO Pipelines divisions of the corporation will utilize the funds obtained from the ATCO debenture and the debenture previously issued in accordance with Decision 20863-D01-2015 to finance capital expenditures, to repay existing indebtedness and to meet other general corporate purposes.

18. ATCO submitted that ATCO Gas and ATCO Pipelines will use the allocated net proceeds from the financings for the following purposes:

- To help maintain capital structures at the level established in Decision 2191-D01-2015.
- To fund various capital programs including \$222,809,000 of 2015 capital expenditures as included in ATCO Gas's capital tracker application²⁰ and \$309,994,000 of capital expenditures included in ATCO Pipelines' 2015-2016 general rate application.²¹

19. In response to a Commission information request, ATCO explained that none of ATCO's existing debentures matured in 2015, which is why it did not provide a list of debt facilities that the proposed issuance would refinance. ATCO indicated that the existing indebtedness, mentioned in its application referred to short-term borrowings from CU Inc. ATCO explained that it borrows from CU Inc. on a short-term basis until long-term debt financing is obtained.

¹⁸ Exhibit 20998-X0008, AGPL-AUC-2015NOV27-003 a).

¹⁹ Exhibit 20998-X0008, AGPL-AUC-2015NOV27-003 b).

²⁰ Proceeding 20604.

²¹ Application 1611077-1.

4 Commission findings

20. In determining whether to grant ATCO's application, the Commission must consider Section 26(2)(a)(ii) 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 ATCO's legal counsel, Bennett Jones LLP, dated November 4, 2015, the Commission is satisfied that issuance of the ATCO debenture will be made in accordance with Alberta securities laws.

22. In the absence of an exemption from the provisions required under Section 26 of the *Gas Utilities Act*, the Commission expects to receive an application under that section far enough in advance to enable the application to be reviewed and a decision rendered in advance of the proposed date of issuance. That was not the case in this instance. However, for the following reasons the Commission finds that an effective date of October 30, 2015, for the ATCO debenture is warranted.

23. The Commission has reviewed the exemptions provided to CU Inc. which, among other things, gives CU Inc. an exemption from the requirement to obtain approval of the Commission prior to issuing securities. CU Inc., as a holding company whose principal operating subsidiaries are ATCO Electric and ATCO Gas and Pipelines Ltd., is the vehicle through which financing is obtained through the capital market for both ATCO Electric and ATCO Gas and Pipelines Ltd. ATCO Electric and ATCO Gas and Pipelines Ltd. are currently unable to access the capital markets on their own. Instead, all market financing activities for these two corporations are performed by CU Inc. The exemption CU Inc. has been granted allows CU Inc. to closely monitor the capital markets and address the financing needs of its subsidiaries when circumstances appear most favourable.

24. Once CU Inc. makes financing arrangements in the capital market on behalf of ATCO Electric and ATCO Gas and Pipelines Ltd., these financing arrangements, as well as the funds derived from them, have to be reflected in the financial records of CU Inc., as it is the legal issuer of the securities. In order for ATCO Electric and ATCO Gas and Pipelines Ltd. to receive these funds, and reflect them in their financial records, these companies have to make financing arrangements with CU Inc. The long-standing practice in making the financing arrangements between ATCO Electric and CU Inc., and ATCO Gas and Pipelines Ltd. and CU Inc., is to make these financing arrangements exactly the same as the arrangements CU Inc. made when it arranged financing in the capital markets.²² This practice is what is described as the "mirroring" concept. The Commission agrees that this mirroring concept is predicated upon the exact replication of the financing arrangements, including the effective issue date. To give the

²² Exhibit 20998-X0003, PDF page 4, paragraph 8(a).

debentures an effective date different than the CU Inc. closing date would be contrary to the mirroring concept.

25. While the Commission accepts the mirroring concept, it also considers that there should not be an excessive delay between the time when CU Inc. issues its securities in the market and when the regulated utilities file an application to effectively mirror this transaction. Any excessive delay could cast doubt on whether the financing obtained by CU Inc. was intended to be ultimately advanced to the regulated utilities. In this case, CU Inc. issued its debenture in the market place on October 30, 2015, and ATCO filed this application to mirror that transaction on November 5, 2015. The Commission finds that this timing of less than one month is not excessive.

26. The Commission notes that although an application pursuant to Section 26(2)(a)(ii) of the *Gas Utilities Act* is a precondition to the issuance of new debt, the Commission's approval of such an application does not remove the duty on the applicant to demonstrate that the debt securities ultimately acquired have been obtained prudently, and that the use of funds is also prudent. The Commission will examine these matters 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 or some other application.

27. Finally, the Commission 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 2014-09.²³

28. 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 its approved capital structure, to finance capital expenditures and to meet other general corporate needs. The Commission accepts these purposes as being valid and consequently approves ATCO's application for approval of the ATCO debenture issuance proposed therein, as filed.

²³ Bulletin 2014-09, Streamlining the debt application process for utilities, April 30, 2014.

5 Order

29. 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 4.211 per cent debenture in the principal amount of \$65,000,000 with a maturity date of October 29, 2055.

Dated on December 22, 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.

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