



**AltaGas Utilities Inc. and  
AltaGas Utility Holdings Inc.**

**2016 Debenture and Common Shares Issue Application**

**June 24, 2016**

**Alberta Utilities Commission**

Decision 21578-D01-2016

AltaGas Utilities Inc. and AltaGas Utility Holdings Inc.  
2016 Debenture and Common Shares Issue Application  
Proceeding 21578

June 24, 2016

Published by the:

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## **1 Introduction**

1. On May 2, 2016, AltaGas Utilities Inc. (AUI) and AltaGas Utility Holdings Inc. (AUHI) each filed an application with the Alberta Utilities Commission requesting approval for the issuance of debentures and common shares. AUI and AUHI requested Commission approval by no later than June 28, 2016, 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 their ultimate parent, AltaGas Ltd. (AL).

2. On May 4, 2016, the Commission issued a notice of application that required interested parties to submit a statement of intent to participate (SIP) by May 11, 2016. There were no SIPs filed regarding this application.

3. Upon reviewing the application, the Commission determined that further information was required before it could issue a decision. Consequently, it issued a round of information requests (IRs), and AUI and AUHI were directed to respond by May 24, 2016.

4. The Commission considers that the record of this proceeding closed with the submission of responses to IRs on May 24, 2016. 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**

5. AUI and AUHI are both "owners of a gas utility" to which Section 26(2)(a) of the *Gas Utilities Act*, 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...

6. Consequently, AUI and AUHI are 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

7. In the current debenture application, AUI and AUHI have requested orders:<sup>1</sup>

- (i) Approving and authorizing AUI to issue to AUHI an inter-company debenture in the principal amount of \$45 million, to be issued on June 29, 2016, maturing on April 7, 2026 (the AUI 2016 debenture).
- (ii) Approving and authorizing AUHI to issue to AltaGas Utility Group Inc. (AUGI) an inter-company debenture in the principal amount of \$45 million, maturing on April 7, 2026 (the AUHI 2016 debenture).
- (iii) Approving the purposes of the issues.
- (iv) Approving the issue date of the AUHI \$45 million 2016 debenture and the AUI \$45 million 2016 debenture (collectively, the 2016 debentures) to be dated June 29, 2016.
- (v) Approving the annual coupon rate of 4.12 per cent per annum and issue costs of 0.08 per cent per annum for the 2016 debentures.
- (vi) Providing such further and other relief as AUI and/or AUHI may request and the AUC may grant in the circumstances.

8. Both AUI and AUHI submitted affidavits sworn by each of Alex Patterson, a director of both AUI and AUHI; and Nancy McKenzie, an officer of AUI, in support of their respective debt applications.

9. The proceeds from the AUHI 2016 debenture will be used by AUHI to subscribe for the AUI 2016 debenture. The proceeds from the AUI 2016 debenture will be used to repay a \$20 million AUI debenture issued to AUHI expiring June 29, 2016, and will be used to finance AUI's 2016 capital expenditures, working capital requirements, to maintain an appropriate capital structure for AUI and for general corporate purposes.<sup>2</sup>

10. AUI submitted that it has been its practice to obtain long-term debt financing indirectly from its ultimate corporate parent, AL, through a series of inter-company transactions following the ownership structure of AUI. AUI explained that it finances primarily with long-term debt facilities so that its financing more closely align with the long-term nature of utility assets.<sup>3</sup>

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<sup>1</sup> Exhibit 21578-X0002, application, paragraphs 1-6.

<sup>2</sup> Exhibit 21578-X0002, application, paragraph 31.

<sup>3</sup> Exhibit 21578-X0002, application, paragraphs 16 and 23.

11. In Decision 2009-176,<sup>4</sup> the Commission determined that when AUI obtains inter-company debt financing, the rates for debt incurred by the ultimate corporate parent should be applied to the debt of AUI. Therefore, in compliance with this direction, AUI determined that if it required long-term debt financing, it will borrow inter-company debt at the same annual coupon rate as AL's most recent term debt issuance to the market.<sup>5</sup>

12. On April 7, 2016, AL issued \$350 million-worth of 10-year medium-term notes (MTNs), with a coupon rate of 4.12 per cent, maturing on April 7, 2026. This is AL's most recent market issuance. Consistent with the directions set out in Decision 2009-176, the annual coupon rate and the maturity date of the AUI 2016 debenture and AUHI 2016 debenture are the same as those of AL's \$350 million 10-year MTNs.<sup>6</sup>

13. The annual issue costs for the AUI 2016 debenture and the AUHI 2016 debenture will be 0.08 per cent per annum. AUI and AUHI submitted that, consistent with Decision 2012-091,<sup>7</sup> the 0.08 per cent is the pro rata allocation of the issuance costs incurred by AL for the issuance of its \$350 million 10-year MTNs.<sup>8</sup> Details of the pro rata allocation of the issuance costs were provided in Exhibit C<sup>9</sup> and in response to AUI-AUC-2016MAY16-001.<sup>10</sup>

14. AUI and AUHI propose to calculate the annual coupon and issue costs for the AUI 2016 debenture and the AUHI 2016 debenture as being payable semi-annually. Under this proposal, the first interest payment date would be October 7, 2016, and will mirror the interest payment dates of AL's \$350 million 10-year MTNs.

15. AUI and AUHI also provided the following as exhibits to the affidavit of Alex Patterson:<sup>11</sup>

- Exhibit A – the form of the AUI 2016 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 AUHI and AUI.
- Exhibit B – the form of debenture for AUHI 2016 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 AUGI and AUHI.
- Exhibit D – a copy of the pricing supplement dated April 4, 2016, prospectus supplement dated August 11, 2015, and base shelf prospectus dated August 10, 2015.
- Exhibit E – a certified copy of AUI board of directors' resolution passed on April 27, 2016, approving the creation of the AUI 2016 debenture, subject to obtaining an order of the AUC approving the same.

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<sup>4</sup> Decision 2009-176: AltaGas Utilities Inc., 2008-2009 General Rate Application Phase I, Proceeding 88, Application 1579247-1, October 29, 2009.

<sup>5</sup> Exhibit 21578-X0002, application, paragraphs 18-19.

<sup>6</sup> Exhibit 21578-X0002, application, paragraphs 20-21.

<sup>7</sup> Decision 2012-091: AltaGas Utilities Inc., 2010-2012 General Rate Application – Phase I, Proceeding 904, Application 1606694-1, April 9, 2012.

<sup>8</sup> Exhibit 21578-X0002, application, paragraphs 25e and 26e.

<sup>9</sup> Exhibit 21578-X0002.

<sup>10</sup> Exhibit 21578-X0009.

<sup>11</sup> Exhibit 20578-X0002.

- Exhibit F – a certified copy of AUHI board of directors’ resolution passed on April 29, 2016, approving the creation of the AUHI 2016 debenture, subject to obtaining an order of the AUC approving the same.
- Exhibit G – the pro forma capital structure for AUI as prepared for inclusion with AUI’s debenture and equity applications.
- Exhibit H – 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.

16. AUI also provided information on its 2016 forecast capital expenditure as Exhibit A with the affidavit of Nancy McKenzie to the application.<sup>12</sup>

### Commission findings

17. In determining whether to approve the AUI 2016 debenture and the AUHI 2016 debenture, the Commission must consider Section 26(2) of the *Gas Utilities Act* reproduced in paragraph 5 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.

18. 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 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 legal counsel to confirm that the 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 April 29, 2016, the Commission is satisfied that the issuance is to be made in accordance with law.

19. 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.

20. 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.<sup>13</sup>

21. The Commission is satisfied, based on AUI’s and AUHI’s submissions in this proceeding, that proceeds from the issuance of their respective 2016 debentures will be used to

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<sup>12</sup> Exhibit 21578-X0002.

<sup>13</sup> Bulletin 2014-09, Streamlining the debt application process for utilities, April 30, 2014.



refinance existing debt, maintain AUI's approved capital structure, finance capital expenditures and meet other general corporate needs. The Commission finds that the requirements of Section 26(2)(a) of the *Gas Utilities Act* have been met, approves the purposes of AUI's and AUHI's 2016 debt issuance and authorizes its completion.

#### 4 Discussion of issues within common shares application

22. In their respective applications for approval to issue common shares, AUI and AUHI requested orders:<sup>14</sup>

- Approving and authorizing AUI to issue up to 269,795 Class A common shares of AUI to its direct parent, AUHI, for a maximum aggregate consideration not to exceed \$12 million;
- Approving and authorizing AUHI to issue up to 3,279,902 common shares of AUHI to its direct parent, AUGI, for a maximum aggregate consideration not to exceed \$12 million;
- Approving the purposes of these issues; and
- Providing such further and other approvals as AUI and/or AUHI may request and the Commission may grant in the circumstances.

23. The estimated maximum net proceeds from the issuance of the AUHI shares will amount to \$12 million, which will be used by AUHI to subscribe for the AUI shares. These funds will then be used by AUI for its capital expenditures, its working capital requirements, maintaining an appropriate capital structure and for other general corporate purposes.<sup>15</sup>

24. In their application, AUI and AUHI confirmed that the "proposed issuance of the AUI shares and the AUHI shares will have no effect on the control of the Corporations."<sup>16</sup>

25. In Decision 2191-D01-2015,<sup>17</sup> the Commission determined a 42 per cent common equity ratio for AUI. In Decision 20371-D01-2015,<sup>18</sup> the Commission directed continued use of the 2013 approved return on equity and capital structure on an interim basis, pending the outcome of the 2016 generic cost of capital proceeding.

26. AUI submitted that the proposed share issuance will result in a capital structure approximating the 42 per cent common equity ratio approved for it in Decision 2191-D01-2015, while taking into consideration its 2016 capital requirements. AUI further submitted that the consideration it would receive for the shares will increase its equity level and move its common equity ratio closer to the forecast equity thickness allowed by the Commission.<sup>19</sup>

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<sup>14</sup> Exhibit 21578-X0001, application, paragraphs 1-4.

<sup>15</sup> Exhibit 21578-X0001, application, paragraph 18.

<sup>16</sup> Exhibit 21578-X0001, application, paragraph 23.

<sup>17</sup> Decision 2191-D01-2015: 2013 Generic Cost of Capital, Proceeding 2191, Application 1608918-1, March 23, 2015.

<sup>18</sup> Decision 20371-D01-2015: 2016 Generic Cost of Capital, Application for Finalization of 2016 Approved Return on Equity and Capital Structures, Proceeding 20371, July 8, 2015.

<sup>19</sup> Exhibit 21578-X0001, application, paragraphs 20-21.

27. In the affidavit of Alex Patterson accompanying the application, AUI and AUHI attached the following exhibits:<sup>20</sup>

- Exhibit A – a certified copy of AUI’s board of directors’ resolution authorizing the proposed issuances up to 269,795 Class A common shares to AUHI for a maximum aggregate consideration not to exceed \$12 million, subject to obtaining an order of the AUC approving the same.
- Exhibit B – a certified copy of AUHI’s board of directors’ resolution authorizing the proposed issuance of up to 3,279,902 common shares of AUHI to AUGI for a maximum aggregate consideration not to exceed \$12 million, subject to obtaining an order of the AUC approving the same.
- Exhibit C – information on the book value and the number of shares to be issued of the AUI Class A common shares and AUHI common shares
- Exhibit D – the pro forma capital structure for AUI as prepared for inclusion with AUI’s debenture and equity applications.
- Exhibit E – a legal opinion of MacPherson Leslie & Tyerman LLP, AUI’s and AUHI’s legal counsel, confirming that the proposed issuance of the shares is to be made in accordance with the securities law of the Province of Alberta at the time of issuance.

### Commission findings

28. In determining whether to grant AUI’s and AUHI’s application, the Commission must consider Section 26(2) of the *Gas Utilities Act*, as reproduced in Section 2 of this decision. 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.

29. 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 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 and AUHI’s legal counsel, MacPherson Leslie & Tyerman LLP, dated April 29, 2016, 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.

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

31. The Commission finds that the requirements of Section 26(2)(a) of the *Gas Utilities Act* have been met. It approves the purposes of AUI’s and AUHI’s proposed share issuance and authorizes its completion.

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<sup>20</sup> Exhibit 21578-X0001, application.

## 5 Order

32. 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 inter-company debenture in the principal amount of \$45 million, to be issued on June 29, 2016, maturing on April 7, 2026, with an issue cost of 0.08 per cent; and
  - (b) 269,795 Class A common shares for a maximum aggregate consideration not to exceed \$12 million.
  
- (2) In accordance with the findings in this decision, AltaGas Utilities Holdings Inc. is authorized pursuant to Section 26(2)(a) of the *Gas Utilities Act* to issue to AltaGas Utility Group Inc., its parent company:
  - (a) an inter-company debenture in the principal amount of \$45 million, maturing on April 7, 2026, with an issue cost of 0.08 per cent; and
  - (b) 3,279,902 common shares of AltaGas Utilities Holdings Inc. for a maximum aggregate consideration not to exceed \$12 million.

Dated on June 24, 2016.

### Alberta Utilities Commission

*(original signed by)*

Bill Lyttle  
Commission Member



**Appendix 1 – Proceeding participants**

<b>Name of organization (abbreviation)</b> <b>Name of company counsel or representative</b>
AltaGas Utilities Inc. (AUI)

Alberta Utilities Commission
Commission panel B. Lyttle, Commission Member
Commission staff R. Finn (Commission counsel) M. Peden (Commission counsel) N. Mahbub