



## **AltaGas Utilities Inc.**

**Gas Utilities Act Code of Conduct Regulation, AR 183/2003  
Audit Exemption**

**May 10, 2013**

**The Alberta Utilities Commission**

Decision 2013-173: AltaGas Utilities Inc.

Gas Utilities Act Code of Conduct Regulation, AR 183/2003

Audit Exemption

Application No. 1609335

Proceeding ID No. 2458

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## **1 Introduction**

1. On February 25, 2013, AltaGas Utilities Inc. (AUI) filed an application with the Alberta Utilities Commission (the AUC or the Commission) requesting an exemption, pursuant to Section 41(1)(a) of the *Gas Utilities Act Code of Conduct Regulation*, AR 183/2003, from the requirement to conduct a compliance audit for the 2012 audit year. This section enables a gas distributor or default supply provider or its affiliated retailer to apply to the Commission for an exemption from all or any provision of the *Gas Utilities Act Code of Conduct Regulation*.
2. Section 37 of the *Gas Utilities Act Code of Conduct Regulation* requires a gas distributor or default supply provider and its affiliated retailer to each appoint an independent auditor to perform a compliance audit on an annual basis in accordance with the *Gas Utilities Act Code of Conduct Regulation*.
3. Pursuant to Section 41(2)(a) of the *Gas Utilities Act Code of Conduct Regulation*, the Commission cannot approve an exemption unless the Commission is satisfied that it is in the public interest to do so and that any exemption does not significantly affect the obligations of the applicant, or that the obligations can be or will be met in other ways.
4. The Commission issued a notice of application on February 28, 2013, requesting parties who wished to intervene in the proceeding to submit a statement of intent to participate (SIP) to the Commission by March 14, 2013.
5. On March 4, 2013, the Commission issued information request AUC-AUI-1 to AUI which was responded to on March 8, 2013.
6. The Commission received a SIP from the Consumers' Coalition of Alberta (CCA) on March 7, 2013, requesting the opportunity to ask information requests before commenting on whether it objects or does not object to the application. On March 13, 2013, the CCA filed a letter informing the Commission that after reviewing AUI's response to the AUC information request, the CCA no longer intended to ask information requests but requested that the AUC proceed with argument and reply argument.
7. On March 18, 2013, the Commission established the following process schedule to address the Application:

<b>Process step</b>	<b>Deadline</b>
Argument	March 28, 2013 - 2 p.m.
Reply argument	April 9, 2013 - 2 p.m.

8. The Commission considers that the record for this proceeding closed on April 9, 2013.

9. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record of this proceeding, including the argument and reply 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

10. The purpose of the *Gas Utilities Act Code of Conduct Regulation* is:

... to ensure that distribution companies, default supply providers and retailers conduct themselves in a manner that supports the competitive operation of the retail natural gas market and that their conduct does not distort that market by offering unfair advantages to retailers.<sup>1</sup>

11. Operations are to be conducted in a manner that is consistent with the eight areas that are addressed in the *Gas Utilities Act Code of Conduct Regulation* :

1. equality of treatment for customers
2. confidentiality of customer information
3. equality of treatment of retailers
4. business practices
5. prevention of unfair competitive advantage
6. maintenance of separate records and accounts
7. development of a compliance plan, and related reporting and monitoring
8. compliance audits

12. AUI is a wholly owned subsidiary of AltaGas Utility Holdings Inc., which is a wholly owned subsidiary of AltaGas Utility Group Inc. (AUGI). AUI is a gas distributor and default supplier within the meaning of the *Gas Utilities Act* and is an indirect wholly owned subsidiary of AltaGas Ltd. AUI has two affiliated retailers, AltaGas Ltd.<sup>2</sup> (AltaGas) and ECNG Energy LP (ECNG).

## 3 The application

13. AUI supported its application for an exemption from the requirement to conduct a compliance audit for 2012 with the following points:

- (a) AUI has demonstrated material compliance in previous years. In 2011, Ernst & Young LLP (Ernst & Young) performed AUI's *Gas Utilities Act Code of Conduct Regulation* and compliance plan audit for 2010 and found AUI to be in compliance in all material

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<sup>1</sup> [Bulletin 2010-25](#), *Gas Utilities Act Code of Conduct Regulation*, AR 183/2001 process changes and clarification of requirements, September 17, 2010.

<sup>2</sup> Effective January 1, 2011, AltaGas Energy Limited Partnership was wound up and all of its assets and liabilities were conveyed to its parent AltaGas Ltd.

respects with the regulation. In Decision 2011-488<sup>3</sup> the Commission stated that AUI was in compliance in all material respects with the *Gas Utilities Act Code of Conduct Regulation* and their respective compliance plans for the 2010 audit year. In 2008, AUC staff performed both AUI's Inter-Affiliate Code of Conduct and *Gas Utilities Act Code of Conduct Regulation* audits for the 2007 audit year and found AUI to be in compliance in all material respects.

- (b) For 2010, 2011 and 2012, all instances of non-compliance identified by AUI in its annual reports to the Commission were remedied by the time the reports were filed. All instances of non-compliance were relatively minor in nature. AUI submits that an exemption from conducting a regulation audit would be reasonable, consistent with regulatory efficiency and potentially provide significant savings for customers in 2013.
- (c) AUI estimated that the audit would cost approximately \$60,000 to \$70,000. Since audit costs are administered by way of a deferral account, an exemption would result in a substantial savings to customers.

#### 4 Views of the CCA

14. The CCA was of the view that an audit exemption is not warranted. The CCA noted that AUI has been granted an exemption from undertaking an audit for four of the last six years ending in 2011. Furthermore, the CCA submitted that concerns raised by the Commission in Decision 2011-193,<sup>4</sup> in denying the 2010 year audit exemption, remain as valid today as they did in 2011. In Decision 2011-193, the Commission was concerned that the risk of non-compliance with the *Gas Utilities Act Code of Conduct Regulation* had increased since AltaGas and ECNG began to operate in AUI's service territory. The Commission was also concerned that changes to AUI's ownership structure since its 2008-2009 GRA Phase 1 application may also contribute to an increase in risk of non-compliance with the regulation.

15. The CCA also indicated that the risk factors may also be somewhat heightened during the performance-based regulation (PBR) period whereby a utility may be financially motivated to find ways of trimming costs by way of changing its business practices. Without conducting an audit, customers cannot be assured that the risk factors noted in Decision 2011-193 are not further intensified during the PBR period.

16. The CCA submitted that the AUC should not grant an exemption for an audit unless AUI has applied for approval of an alternative compliance plan which meets the objectives of AR 183/2003.

17. The CCA also noted that the cost of the audit to AUI would be fairly insignificant as the 2010 audit cost was about \$17,500. The 2012 audit cost would be \$60,000-\$70,000 split three ways and the benefits of an audit to customers, far outweigh the costs to AUI.

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<sup>3</sup> Decision 2011-488: AltaGas Ltd., as Administrator for AltaGas Energy Limited Partnership, and ECNG Energy L.P. and on behalf of AltaGas Utilities Inc., *Gas Utilities Act Code of Conduct Regulation*, AR 183/2003, Audit Reports, Application Nos. 1607646, 1607647 and 1607648, Proceeding No. ID 1431, December 13, 2011.

<sup>4</sup> Decision 2011-193: *Gas Utilities Act Code of Conduct Regulation*, AR 183/2003, Audit Exemption, Application No. 1607029, Proceeding ID No. 1089, May 3, 2011.

## 5 Views of AUI

18. AUI submitted that its yearly *Gas Utilities Act Code of Conduct Regulation* filings have provided a thorough and complete record of any issues or events arising in relation to the its code of conduct. Based on these filings and AUI's prior audits, there is a clear history of compliance. Therefore, AUI submitted that an exemption for the 2012 year is reasonable and appropriate.

19. In its argument, AUI submitted that it is inefficient and unwarranted to conduct a *Gas Utilities Act Code of Conduct Regulation* compliance audit for each and every year, considering there has been no material non-compliance and AUI has had relatively few reportable instances. AUI proposed that the AUC should give consideration to working with parties on adjustments to the annual audit obligation to reduce the requirement to once every three or four years.

20. AUI further noted that a 2012 audit would likely cause resource constraints, potentially impacting the schedules of other AUC proceedings.

## 6 Commission findings

21. Section 41(1) of the *Gas Utilities Act Code of Conduct Regulation* states:

**41(1)** A gas distributor or default supply provider or its affiliated retailer may apply to the Commission

- (a) for an exemption from all or any provision of this Regulation,
- (b) for approval of an alternative compliance plan that meets the objectives of this Regulation but in a way that is different from the requirements of this Regulation, or
- (c) for an exemption from some provisions of this Regulation and an alternative compliance plan for others.

22. Given the use of "or" in Section 41(1), the Commission considers that an applicant may apply for an exemption, approval of an alternative compliance plan or both. For this reason, the Commission does not accept the CCA's submission that the AUC should not grant an exemption for an audit unless AUI has also applied for approval of an alternative compliance plan which meets the objectives of AR 183/2003.

23. The Commission recognizes that AUI has only been audited three times. The first audit was by Ernst & Young for the four months ending December 31, 2005, the second by AUC staff for the year ending December 31, 2007, the third by Ernst & Young for the year ending December 31, 2010. The audit opinions all stated that AUI was in all material respects in compliance with the *Gas Utilities Act Code of Conduct Regulation*.

24. AUI submitted that all instances of non-compliance identified in its annual reports to the Commission for 2010, 2011 and 2012, filed in accordance with Section 33 of the *Gas Utilities Act Code of Conduct Regulation*, had been remedied before the reports were filed. However, there have been non-compliance matters, particularly concerning Section 3 of the *Gas Utilities Act Code of Code Regulation* that, although ultimately resolved, occurred repeatedly between 2010 and 2012. The non-compliance matters from the annual reports are summarized in



Appendix 2. Further, the Commission considers that an audit may identify instances of non-compliance that were not identified by AUI.

25. As AltaGas Ltd. and ECNG have now established customers and are actively marketing within AUI's territory, there is an increased risk of non-compliance with the *Gas Utilities Act Code of Conduct Regulation*.

26. For example, in Decision 2011-346, the Commission raised concerns that without formal or legal separation between retail and default gas supply functions<sup>5</sup> there was a potential for cross-subsidization of retail customers by rate regulated customers. The failure to keep separate records and accounts and the possibility of cross-subsidization would be contrary to the intent of the *Gas Utilities Act Code of Conduct Regulation*. For example the concerns raised in Decision 2011-346 could result in behaviour contrary to one or more of sections 19, 22(a), 23, 26(1) and 28. As AUI was granted an exemption from the requirement for an audit in 2011, there has not been an audit of AUI since the concerns were raised.

27. In response to an information request from the Commission, AUI clarified that it incorrectly stated that the forecast costs of the audit would be attributable to customers as pursuant to Decision 2012-091,<sup>6</sup> audit costs became part of AUI's base rates. Furthermore, as a result of Decision 2012-237,<sup>7</sup> under PBR, any costs over and above the amounts approved in AUI's 2013 rates (\$17,500) would be attributable to AUI's shareholders. The Commission therefore considers that there would be no costs savings from an audit exemption to the benefit of customers.

28. For the reasons cited above, the Commission is not satisfied that it would be in the public interest to grant AUI's request for an exemption from the requirement for a compliance audit for the 2012 audit year. The Commission denies, AUI's application pursuant to Section 41(1)(a) of the *Gas Utilities Act Code of Conduct Regulation* for an exemption from the requirement to conduct a compliance audit for the 2012 audit year.

29. The Commission considers that AUI's suggested change to reduce audit requirements to once every three or four years is beyond the scope of this proceeding.

30. Given the findings in this decision and Decision 2013-174<sup>8</sup> the Commission would be willing to consider waiving the requirement in Section 37 of the *Gas Utilities Act Code of Conduct Regulation*, for each gas distributor or default service provider and its affiliated retailer to each appoint an independent auditor, if AltaGas Utilities Inc., AltaGas Ltd. and ECNG conclude a combined audit could achieve the purpose of the regulation on a cost effective basis, provided the combined audit met the requirements of the *Gas Utilities Act Code of Conduct Regulation*.

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<sup>5</sup> Decision 2011-346: AltaGas Utilities Inc., Natural Gas Settlement System Code Rules Exemption Application, Application No. 1607324, Proceeding ID No. 1236, August 23, 2011, paragraph 31.

<sup>6</sup> Decision 2012-091: 2010-2012 General Rate Application – Phase 1, Application No. 1606694, Proceeding ID No. 904, April 9, 2012.

<sup>7</sup> Decision 2012-237: Rate Regulation Initiative, Distribution Performance-Based Regulation, Application No. 1606029, Proceeding ID No. 566, September 12, 2012.

<sup>8</sup> Decision 2013-174: AltaGas Ltd., ECNG Energy LP, *Gas Utilities Act Code of Conduct Regulation*, AR 183/2003, Audit Exemption, Application Nos. 1609387 and 1609388, Proceeding ID No. 2499, May 10, 2013.

31. Given AUI's submissions regarding time constraints, and resources the Commission directs AUI to file an application requesting the approval of its auditor and a work plan describing the audit, the review procedures to be used and the scope of the work, as required under sections 37 and 38 of the *Gas Utilities Act Code of Conduct Regulation*, by June 15, 2013. Given the Commission's concerns referred to in paragraph 26, the Commission expects that the work plan will clearly examine the issue of possible cross-subsidization. Once the audit plan is approved, the Commission will establish the necessary deadlines for the filing of the audit but will exempt AUI from the requirement in Section 39(1)(a) of the *Gas Utilities Act Code of Conduct Regulation* and will not require the audit to be completed by July 1, 2013.

## 7 Order

32. It is hereby ordered that:

- (1) AUI file an application requesting the approval of its auditor and a work plan describing the audit, the review procedures to be used and the scope of the work, as required under sections 37 and 38 of the *Gas Utilities Act Code of Conduct Regulation*, AR 183/2003, by June 15, 2013.

Dated on May 10, 2013.

### The Alberta Utilities Commission

*(original signed by)*

Kay Holgate  
Commission Member

**Appendix 1 – Proceeding participants**

<b>Name of organization (abbreviation) counsel or representative</b>
AltaGas Utilities Inc. (AltaGas) N. J. McKenzie
Consumers' Coalition of Alberta (CCA) J. A. Wachowich A. P. Merani

The Alberta Utilities Commission
Commission Panel K. Holgate, Commission Member
Commission Staff S. Ramdin (Commission counsel) J. Rooprai M. McJannet A. Glass P. Howard

**Appendix 2 – AUI Non-compliance matters reported in 2010, 2011 and 2012**

Code	2010	2011	2012
Section 9 – Confidentiality rule	<p>Q1 – AUI unintentionally provided a set of retail billing data files containing Customer Information to the incorrect billing agent</p> <p>Q3 – A small number of default supply customer bills, related to both default supply and retail supply accounts were unintentionally mailed to incorrect addresses</p>	<p>Q2 – Due to a billing system error, a Tariff Bill File (TBF) containing Customer Information for one Customer was incorrectly sent to the billing agent of the wrong Retailer</p> <p>Q4 - AUI inadvertently mailed eight (8) customer test bills containing Customer Information to another utility subsidiary of AltaGas Utility Group Inc.</p>	<p>Q1 - A handheld meter reading devices was stolen from a contract meter reader's vehicle which contained information on approximately 100 customer sites and password was noted on the device.</p>
Section 10 – Disclosure of customer information with consent	<p>Q1 – AUI unintentionally provided a set of retail billing data files containing Customer Information to the incorrect billing agent</p> <p>Q3 - A small number of default supply customer bills, related to both default supply and retail supply accounts were unintentionally mailed to incorrect addresses</p>	<p>Q2 – Due to a billing system error, a Tariff Bill File (TBF) containing Customer Information for one Customer was incorrectly sent to the billing agent of the wrong Retailer</p>	
Section 3 – Behaviour of gas distributors, default supply providers and retailers	<p>Q4 – Two contractors were not required to complete the initial Compliance Acknowledgement upon entering into contract with AUI</p>	<p>Q2 – Two contractors did not complete the initial Compliance Acknowledgement upon entering into contract with AUI</p> <p>Q3 – A contract Technician did not return the initial Compliance Acknowledgement despite completing the computer based Code of Conduct training</p>	
Section 18 (1) e – Permit website users to access web pages relating to retail gas services from web pages relating to regulated gas			<p>Q1 – AUI's parent, AUGI redirected its website to the Utilities page of the AltaGas website. AUI identified two AUGI website links on its website.</p>