



AUC

Alberta Utilities Commission

**AltaGas Ltd.
ECNG Energy LP**

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

May 10, 2013

The Alberta Utilities Commission

Decision 2013-174: AltaGas Ltd.

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

Audit Exemption

Application No. 1609387

ECNG Energy LP

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

Audit Exemption

Application No. 1609388

Proceeding ID No. 2499

May 10, 2013

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ECNG Energy LP
Gas Utilities Act Code of Conduct Regulation, AR 183/2003
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Decision 2013-174
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1 Introduction and background

1. On March 15, 2013, AltaGas Ltd. (AltaGas), on its own behalf and as administrator for ECNG Energy LP (ECNG) filed an application with the Alberta Utilities Commission (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, for AltaGas and ECNG from conducting compliance audits 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 March 19, 2013, requesting parties who wished to intervene in the proceeding to submit a statement of intent to participate (SIP) to the Commission by April 4, 2013.

5. The Commission received a SIP from the Consumers' Coalition of Alberta (CCA) requesting the opportunity to test the application with a process of written information requests before commenting on whether it objects or does not object to the application.

6. On April 9, 2013, the Commission established the following process and schedule to deal with the application:

| Process step | Deadline |
|-------------------------------|-------------------------|
| Information requests | April 16, 2013 - 2 p.m. |
| Information request responses | April 23, 2013 - 2 p.m. |
| Argument | April 30, 2013 - 2 p.m. |
| Reply argument | May 7, 2013 - 2 p.m. |

7. The CCA filed its reply argument on May 8, 2013. The Commission considers that the record for this proceeding closed on May 8, 2013.

8. 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

9. 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.”¹

10. 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

11. AltaGas² and ECNG are the affiliated retailers of AltaGas Utilities Inc. (AUI). Since the approval of the compliance plans in August 2005 and through December 31, 2010, there has been modest growth in the marketing activities of AltaGas and ECNG in Alberta. AltaGas and ECNG have a total of approximately 425 commercial and industrial gas customers in Alberta.

3 The application

12. AltaGas and ECNG stated the following in support of their application for exemptions from conducting a compliance audit in 2013 for the 2012 audit year:

- (a) For 2012, AltaGas and ECNG have made all required filings under the *Gas Utilities Act Code of Conduct Regulation* and the compliance plan, including their annual filing with the Commission. In 2012, there were no instances of non-compliance identified by AltaGas or ECNG and accordingly none reported to the Board of Directors of AltaGas and to the Commission. There have been no complaints from the public.

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

² 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.

(b) In 2011, as directed by the Commission, AltaGas and ECNG retained Ernst & Young LLP (Ernst & Young) to perform an audit in compliance with the *Gas Utilities Act Code of Conduct Regulation*. The Ernst & Young audit reports for the 2010 audit year were filed with the Commission on September 6, 2011. In Decision 2011-488³ the Commission stated that AltaGas and ECNG were 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.

(c) AltaGas and ECNG submit that the requirement to conduct a 2012 audit for AltaGas and ECNG is disproportionate to the benefit to the public that could result from conducting such an audit, particularly in light of the audit completed in 2011, the determination by the Commission that ECNG and AltaGas were in compliance in all material respects with the regulation and their respective compliance plans for 2010, the lack of identified instances of non-compliance in 2012 and the fact that there were no complaints from the public in 2012.

(d) AltaGas submits that the expense to conduct a 2012 audit for AltaGas and ECNG is disproportionate to the benefit that could result given the small number of customers they have in Alberta.

4 Views of the CCA

13. The CCA stated that the costs of the audit are immaterial relative to the value such an audit would provide. The CCA submitted that an audit exemption, similar to that requested in this application, has not been granted to any other natural gas distributor in Alberta. It noted that the number of AUIs commercial and industrial customers has grown to 17 times the number of customers in 2005 and that only two audits have been performed over a seven year period.

5 Views of the Commission

14. Since AltaGas Energy and ECNG began to operate in AUI's service territory in 2011, there has been the risk of non-compliance with the *Gas Utilities Act Code of Conduct Regulation*. Given the growth in customers served by AltaGas and ECNG in AUI's service territory, it is possible that the risk of non-compliance has increased. AltaGas and ECNG now have established customers and are actively marketing within AUI's territory. The following table presents the number of customers AltaGas and ECNG serve in AUI's service territory and the corresponding volumes of gas. The Commission notes that the CCA has referred to total customers rather than customers within AUI's service area.

³ Decision 2011-488: AltaGas Ltd., as Administrator for AltaGas Energy Limited Partnership, and ECNG 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 ID No. 1431, December 13, 2011.

Table 1. AltaGas and ECNG number of customers and gas volumes⁴

| Year | Number of commercial and industrial customers in AUI's distribution territory | Share of AUI gas acquired by AltaGas and ECNG |
|------|-------------------------------------------------------------------------------|-----------------------------------------------|
| 2011 | 42 | 0.5% |
| 2012 | 56 | 1.2% |

15. In Decision 2011-346, the Commission raised concerns that without formal or legal separation between retail and default gas supply functions⁵ 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.

16. The Commission acknowledges that AltaGas and ECNG have met all reporting requirements for 2012 for the *Gas Utilities Act Code of Conduct Regulation*. In 2012 there were no instances of non-compliance identified by AltaGas and ECNG and accordingly none were reported to AltaGas' Board of Directors or to the Commission. However, the Commission considers that an audit may identify instances of non-compliance that were not identified by AltaGas and ECNG.

17. For the foregoing reasons, the Commission is not satisfied that it would be in the public interest to grant AltaGas' request for exemption for AltaGas and ECNG from the requirement for a compliance audit for the 2012 audit year. The Commission denies AltaGas' application, pursuant to Section 41(1) (a) of the *Gas Utilities Act Code of Conduct Regulation*, for exemptions for AltaGas and ECNG from the requirement to conduct compliance audits for the 2012 audit year.

18. Given the findings in this decision and Decision 2013-173,⁶ the Commission recommends that AltaGas and ECNG explore the opportunity to reduce their audit costs by undertaking a joint audit with AltaGas Utilities Inc. 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*.

19. Given the Commission's findings in Decision 2013-174, the Commission directs AltaGas and ECNG 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 15, the Commission expects that the work plan will clearly examine the issue of possible cross-subsidization. Once the audit plan is approved,

⁴ Exhibit 10.01, AL response to AUC-AL-1.

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

⁶ Decision 2013-173: AltaGas Utilities Inc., *Gas Utilities Code of Conduct Regulation*, AR 183/2003, Audit Exemption, Application No. 1609335, Proceeding ID No. 2458, May 10, 2013.

the Commission will establish the necessary deadlines for the filing of the audit but will exempt AltaGas and ECNG 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.

6 Order

20. It is hereby ordered that:

AltaGas and ECNG file applications requesting approval of their auditors and work plans 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 June 15, 2013.

Dated on May 10, 2013.

The Alberta Utilities Commission

(original signed by)

Kay Holgate
Commission Member

Appendix 1 – Proceeding participants

| Name of organization (abbreviation) counsel or representative |
|--------------------------------------------------------------------------|
| ECNG Energy LP D. Dawson |
| AltaGas Utilities Inc. (AltaGas) D. Dawson T. Belsham |
| Consumer's Coalition of Alberta (CCA) J. A. Wachowich A. P. Merani |

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