



# AUC

Alberta Utilities Commission

## **ATCO Gas and Pipelines Ltd.**

**Application to Issue Debentures to CU Inc.:**

**4.543 Per Cent Debenture in the Principal Amount of  
\$171,400,000**

**4.593 Per Cent Debenture in the Principal Amount of  
\$68,600,000**

**January 11, 2012**

**The Alberta Utilities Commission**

Decision 2012-010: ATCO Gas and Pipelines Ltd.

Application to Issue Debentures to CU Inc.:

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Application No. 1607871

Proceeding ID No. 1557

January 11, 2012

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## **1 Introduction**

1. ATCO Gas and Pipelines Ltd. (AGPL) filed two applications on November 7, 2011, with the Alberta Utilities Commission (the AUC or the Commission) for approval to issue to CU Inc. certain debentures. The first application requested approval to issue a 4.543 per cent debenture in the principal amount of \$171,400,000 at a price of 100.00 to yield 4.543 per cent (the 4.543 per cent debenture). The second application requested approval to issue a 4.593 per cent debenture in the principal amount of \$68,600,000 at a price of 100.00 to yield 4.593 per cent (the 4.593 per cent debenture). The Commission considered both of these applications as one proceeding and assigned Proceeding ID No. 1558 to the applications.

2. Notice was issued electronically on November 9, 2011. Interested parties were asked to submit a statement of intent to participate (SIP) on or before November 23, 2011. The Commission did not receive any response to its notice.

3. The Commission issued information requests (IR) to AGPL on December 2, 2011. Responses to the information requests were due December 9, 2011.

4. On December 8, 2011, AGPL submitted a letter to the Commission requesting a time extension to December 13, 2011, in order to provide its responses to the Commission's information requests. In a letter dated December 12, 2011, the Commission granted the requested time extension. On December 13, 2011, the Commission received AGPL's responses.

5. For the purposes of this decision, the Commission considers the record closed on December 13, 2011.

6. In reaching the determinations set out in this decision, the Commission has considered the record of this proceeding. 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 other relevant portions of the record with respect to that matter.

## **2 Background and details of the application**

7. CU Inc. owns all the common shares of AGPL and CU Inc. is itself a wholly owned subsidiary of Canadian Utilities Ltd., part of the ATCO Group of Companies. The debentures of

the Corporation are rated “A” (high) with a stable trend by Dominion Bond Rating Services and “A” with a stable outlook by Standard & Poor’s rating service.

#### **4.543 per cent debenture**

8. On October 24, 2011, CU Inc., through agents, completed the sale to the public of debentures in the principal amount of \$500,000,000 at a coupon rate of interest of 4.543 per cent, at a price of 100.00 to yield 4.543 per cent, with a maturity date of October 24, 2041. The debenture issue was made in compliance with Order U99115<sup>1</sup> and Decision U99118<sup>2</sup> which, among other things, grants an exemption to CU Inc. from the requirement to obtain the approval of the Commission prior to issuing securities. All of the proceeds from the sale of these debentures were advanced by CU Inc. to AGPL and ATCO Electric Ltd. (AE) on October 24, 2011, subject to the assumption by AGPL and AE of their pro rata share of the fees and expenses to be paid by CU Inc. in connection with this issue.

9. AE subsequently issued a 4.543 per cent debenture to CU Inc. for \$328,600,000 at a price of 100.00 to yield 4.543 per cent in respect of the advance of \$328,600,000 made to AE by CU Inc.

10. The remainder of \$171,400,000 was advanced by CU Inc. to AGPL.

#### **4.593 per cent debenture**

11. On October 24, 2011, CU Inc., through agents, also completed the sale of debentures to the public in the principal amount of \$200,000,000 at a coupon rate of interest of 4.593 per cent, at a price of 100.00 to yield 4.593 per cent with a maturity date of October 24, 2061.

12. This issuance was also made in compliance with Order U99115 and Decision U99118.

13. All of the proceeds from the sale of these debentures were advanced by CU Inc. to AGPL and AE on October 24, 2011, subject to the assumption by AGPL and AE of their pro rata share of the fees and expenses to be paid by CU Inc. in connection with this issue. Of this amount, \$131,400,000 was advanced to AE and \$68,600,000 was advanced to AGPL.

14. AGPL’s affidavit stated that the proposed issue of the 4.543 per cent debenture and the 4.593 per cent debenture would have no effect on the control of AGPL nor on the voting power related to the shares of AGPL.<sup>3</sup>

15. Marked as Exhibit “B” to the affidavit was a copy of the resolution of the Board of Directors of ATCO Gas and Pipelines Ltd. passed on November 3, 2011, authorizing the creation of the debentures.<sup>4</sup>

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<sup>1</sup> Order U99115: CU Inc. Application Regarding Exemption from Certain Sections of the Public Utilities Board Act and the Gas Utilities Act, Application No. 990182, File 6640-179, November 23, 1999.

<sup>2</sup> Decision U99118: CU Inc., Variance of the Order Approved as part of Decision U99115 Dated 23 November 1999, Application No. 990182, File No. 6640-179, December 21, 1999.

<sup>3</sup> Exhibit 1, AGPL application, Affidavit, paragraph 14.

<sup>4</sup> Ibid., paragraph 7.

### 3 Discussion of issues and Commission findings

16. In determining whether to grant AGPL's applications, the Commission must consider Section 101(2)(a)(ii) of the *Public Utilities Act*. Therefore, the primary focus is to determine a) whether the proposed issue would be made in accordance with law and (b) whether the Commission would approve the purpose of this issue.

#### 3.1 Proposed debentures are in accordance with law

17. The essential factor in deciding whether this debt issuance is made in accordance with law is to ensure that the proposed debentures comply with the corporate and securities law requirements concerning such transactions. The Commission usually 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 form and content of the debenture issued conforms with applicable laws.

18. In this proceeding, the legal opinion was provided by Bennett Jones LLP, counsel to AGPL in connection with the proposed debenture issue. In providing its legal opinion, Bennett Jones examined:

1. copies of the articles and by-laws of the AGPL
  2. the form of the 4.543 per cent debenture and the 4.593 per cent debenture
  3. a certified copy of a resolution of the directors of the corporation authorizing the creation and issue of the 4.543 per cent debenture and the 4.593 per cent debenture
19. Based on the foregoing, Bennett Jones was of the opinion that:
1. AGPL is a corporation validly existing under the laws of Canada, has the corporate power to carry on its business, and is a valid and subsisting extra-provincial corporation under the *Business Corporations Act* (Alberta)
  2. AGPL has all requisite corporate power and authority to create and issue the 4.543 per cent debenture and the 4.593 per cent debenture
  3. the 4.543 per cent debenture and 4.593 per cent debenture, when executed by AGPL and delivered for value following the approval of the Alberta Utilities Commission of the issue thereof, will be a valid and binding obligation of AGPL enforceable in accordance with its terms
  4. the issue of the 4.543 per cent debenture and the 4.593 per cent debenture is exempt from the registration and prospectus requirements of the *Securities Act* (Alberta)
20. Based on the opinion provided by AGPL's legal counsel, Bennett Jones LLP, which was filed with the application, the Commission is satisfied that the proposed debenture issuances will be made in accordance with law.

### 3.2 Use of proceeds and capital structure

21. In the application, AGPL stated that the estimated net proceeds from the sale of the 4.543 per cent debenture would amount to approximately \$170,359,800<sup>5</sup> and that the estimated net proceeds from the sale of the 4.593 per cent debenture would amount to \$68,183,300<sup>6</sup> after deducting the fees and estimated expenses to be paid by CU Inc. in connection with the issuance cost of the debenture.

22. AGPL stated that the net proceeds would be applied to finance capital expenditures, repay existing AGPL debt and would be used for other corporate purposes. Of the net proceeds from the 4.543 per cent issue, \$113,606,200 will be allocated to the ATCO Gas division of AGPL and \$56,753,400 will be allocated to the ATCO Pipelines division of AGPL. Of the net proceeds from the 4.593 per cent debenture, \$45,422,000 will be allocated to the ATCO Gas division of AGPL and \$22,760,900 will be allocated to the ATCO Pipelines division of AGPL.

23. In an IR response,<sup>7</sup> AGPL elaborated further that the total debenture proceeds of \$238.5 million (of which \$159 million has been allocated to ATCO Gas and \$79.5 million to ATCO Pipelines) would be used to finance 2011 capital expenditures as well as repay \$75.0 million (\$47.5 million for ATCO Gas and \$27.5 million for ATCO Pipelines) in existing debt. AGPL also clarified that no amounts of the debenture financing would be used by AGPL for general corporate purposes despite what it had stated in the application. AGPL stated that it is customary to include general corporate purposes language in financings and simply had mirrored the same language found in the CU Inc. public financing.

24. In the application, AGPL stated that it would be issuing the 4.543 per cent debenture and the 4.593 per cent debenture to help maintain its capital structure at the level established in the Commission's Generic Cost of Capital proceeding (Decision [2009-216](#)).<sup>8</sup> The table below compares the pro forma capital structure of AGPL prior to the debenture issue to the pro forma capital structure after giving effect to the sale of the debentures. The capital structure of both ATCO Gas and ATCO Pipelines is provided.

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<sup>5</sup> Exhibit 2, paragraph 11 of the affidavit from the AGPL application for authority to issue a 4.543 per cent debenture in the principal amount of \$171,400,000.

<sup>6</sup> Exhibit 1, paragraph 11 of the affidavit from the AGPL application for authority to issue a 4.593 per cent debenture in the principal amount of \$68,600,000.

<sup>7</sup> Exhibit 13, AUC-AGAP-02.

<sup>8</sup> Decision 2009-216: 2009 Generic Cost of Capital, Application No. 1578571, Proceeding ID. 85, November 12, 2009.



**Table 1. Pro forma capital structures<sup>9</sup>**

|                       | September 30, 2011 |        | Adjusted<br>September 30, 2011 |       |
|-----------------------|--------------------|--------|--------------------------------|-------|
|                       | 000's              | %      | 000's                          | %     |
| <b>ATCO Gas</b>       |                    |        |                                |       |
| Long Term Debt        | 729.4              | 49.2   | 889.4                          | 54.1  |
| Preferred Shares      | 128.3              | 8.6    | 128.3                          | 7.8   |
| Common Equity         | 625.8              | 42.2   | 625.8                          | 38.1  |
| Total                 | 1,483.5            | 100.00 | 1,643.5                        | 100.0 |
| <b>ATCO Pipelines</b> |                    |        |                                |       |
| Long Term Debt        | 376.8              | 45.5   | 456.8                          | 50.3  |
| Preferred Shares      | 44.4               | 5.4    | 44.4                           | 4.9   |
| Common Equity         | 407.4              | 49.1   | 407.4                          | 44.8  |
| Total                 | 828.6              | 100.0  | 908.6                          | 100.0 |

\* After the effect of the 4.543 per cent debenture and the 4.593 per cent debenture.

25. The Commission is satisfied, based on AGPL's submissions, that the net proceeds of the debenture issues will be used to repay existing indebtedness and finance capital expenditures. The Commission is also satisfied that the debenture issuances will help maintain AGPL's capital structure at the level approved by the Commission. For these reasons, the Commission approves the stated purposes for the issuances of the debentures.

### 3.3 Terms of the debentures and interest rate

26. The maturity date of October 24, 2041 for the 4.543 per cent debenture results in a 30-year term while the maturity date of October 24, 2061 for the 4.593 per cent debenture results in a 50-year term. In an IR response,<sup>10</sup> AGPL stated that CU Inc. consistently tries to match long term assets with long term financing whenever appropriate, while also taking into consideration current capital market conditions and the company's debt maturity schedule and future refinancing obligations.

27. In Exhibit "D" of the application, AGPL provided information on recent debt issues from similar, comparable corporations. A number of comparable utilities had corporate debt issues with 30-year terms but none had 50-year terms. A 50-year term is unprecedented for a utility in Alberta.

28. In a reply to an IR<sup>11</sup> on this issue, AGPL responded that the 50-year debenture issue was done opportunistically, similar to the 40-year issue completed by CU Inc. in November 2010. Investor demand existed for an ultra-long dated issuance and CU Inc., with its "A" rating, was able to successfully market the debentures and lock in historically low rates for a long period. The premium for the 50-year term over the 30-year term was five basis points. AGPL stated that

<sup>9</sup> Exhibit 1, AGPL application, Exhibit "E".

<sup>10</sup> Exhibit 13, AUC-AGAP-05.

<sup>11</sup> Ibid.

the coupon on both the 30 and 50-year debentures are the lowest CU Inc. presently has outstanding.<sup>12</sup>

29. Interest on the debentures is calculated and paid twice a year on the 24th day of April and October in each year commencing in 2012.

30. The following table, supplied by AGPL in an IR response,<sup>13</sup> describes how the rates for both the 30 and 50-year debentures were arrived at.

**Table 2. Debenture interest rate calculation**

|  | 2011<br>actual | 2011<br>forecast | Variance |
|--|----------------|------------------|----------|
| Long Canada Bond Rate                  | 2.943%         | 3.90%            | -0.957%  |
| Credit spread of the 30-year debenture | 1.600%         | 1.40%            | 0.200%   |
| Credit spread of the 50-year debenture | 1.650%         | 1.40%            | 0.250%   |

31. AGPL stated that CU Inc. priced the debentures on October 19, 2011, and issued them three business days later on October 24, 2011. On October 19, 2011, the Long Canada Bond rate was 2.943 per cent. AGPL also provided that the 1.40 per cent credit spread forecast was based on credit spreads for recent bond issuance in Canadian capital markets, implied credit spreads from secondary bond trading of CU Inc. and other utility bonds as well as discussions with capital markets advisors.

32. The Commission observed that the Long Canada Bond rate was significantly lower than forecast and that credit spreads were higher than forecast. AGPL stated that the recent fragile global economic environment has resulted in volatile capital markets, higher credit spreads and continuing low Long Canada Bond rates.<sup>14</sup>

33. AGPL provided a table comparing the reasonableness of pricing arrangements for recent similar corporate debt issues.<sup>15</sup> According to the table, similar corporations operating in Alberta, such as FortisAlberta Inc. and AltaLink Management Ltd., with similar credit ratings and issuing debt of comparable terms and amounts have similar interest rates. There was no comparable information available for the 50-year debenture.

34. In summary, the Commission finds that AGPL has provided sufficient evidence to demonstrate that the proposed interest rate is fair and reasonable. AGPL has further explained how the interest rates were derived. Moreover, the Commission is aware that this method has been approved in a previous application.<sup>16</sup> Finally, the Commission finds that the term is generally comparable to debt offered by other electric utilities operating in Alberta.

<sup>12</sup> Ibid.

<sup>13</sup> Exhibit 13, AUC-AGAP-04.

<sup>14</sup> Ibid.

<sup>15</sup> Exhibit 1, AGPL application, Exhibit "D".

<sup>16</sup> Decision 2011-057: ATCO Electric Ltd., Application to Issue Debentures to CU Inc.: 4.947 Per cent in the Principal Amount of \$125,000,000, Application No. 1606855, Proceeding ID No. 1006, February 17, 2011.

35. Having reviewed the evidence and explanations, the Commission agrees that the customers of AGPL will benefit from lower financing costs as a result of the new interest rates that are at or near historic lows and that the terms for the debentures are reasonable.

36. The Commission is also satisfied that the 50-year term of the debenture is matched by the life of the assets it will be used to finance and thus the term for this debenture issue has been deemed valid and reasonable. Examining AGPL's current debt maturity profile and the average level of absolute interest rates compared with historic debt costs, the Commission considers that it was prudent that AGPL issued such an extended term debenture. Interest rates may continue to decline or may rise in the future but this debt will reduce liquidity pressures for 50 years and at the same time lock in rates that have not been achieved for consumers for long term debt for AGPL compared with any debt currently outstanding.

### **3.4 Fees and expenses**

37. AGPL stated that the principal amount of the 4.543 per cent debenture was \$171,400,000 and that the estimated net proceeds would be \$170,359,600. Fees and estimated expenses to be paid by CU Inc. in connection with the issue are approximately \$1,040,400 or 0.61 per cent of the principal amount. The principal amount of the 4.593 per cent debenture was \$68,600,000 and the estimated net proceeds are \$68,183,300. Fees and estimated expenses to be paid by CU Inc. in connection with the issue are approximately \$416,700 or 0.61 per cent of the principal amount.

38. These fees and expenses are consistent with those recently approved by the Commission in Decision 2011-057.

39. For all these reasons, the Commission accepts the fees and expenses as reasonable.

#### **4 Order**

40. It is hereby ordered that:

ATCO Gas and Pipelines Ltd. is authorized pursuant to Section 101(2)(a) of the *Public Utilities Act*, to issue to CU Inc., owner of all the common shares of AGPL, a 4.543 per cent debenture in the principal amount of \$171,400,000 at a price of 100.00 to yield 4.543 per cent with a maturity date of October 24, 2041, and a 4.593 per cent debenture in the principal amount of \$68,600,000 at a price of 100.00 to yield 4.593 per cent with a maturity date of October 24, 2061, in accordance with the findings in this decision.

Dated on January 11, 2012.

#### **The Alberta Utilities Commission**

*(original signed by)*

Bill Lyttle  
Commission Member

## Appendix 1 – Proceeding participants

| Name of organization (abbreviation)<br>counsel or representative          |
|---|
| ATCO Gas and Pipelines Ltd. (AGPL)<br>C. Warkentin<br>A. Green<br>L. Fink |

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|--|
| The Alberta Utilities Commission   |
| Commission Panel<br>B. Lyttle, Commission Member                           |
| Commission Staff<br>C. Wall (Commission Counsel)<br>C. Taylor<br>N. Mahbub |