



AltaGas Utilities Inc.

**Application for Approval to Issue a Debenture in the
Principal Amount of \$20,000,000**

May 31, 2012

The Alberta Utilities Commission

Decision 2012-147: AltaGas Utilities Inc.

Application for Approval to Issue a Debenture in the Principal Amount of \$20,000,000

Application No. 1608354

Proceeding ID No. 1841

May 31, 2012

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1 Introduction

1. On April 19, 2012, AltaGas Utilities Inc. (AUI) filed an application (debenture application) with the Alberta Utilities Commission (AUC or the Commission) pursuant to Section 26(2)(a)(ii) of the *Gas Utilities Act*, RSA 2000, c. G-5 requesting approval and authorization to issue a debenture in the principal amount of \$20,000,000.
2. In the AUI 2012 debenture application, AUI requested an order:
 - i. Approving and authorizing AUI to issue to AltaGas Utility Holdings Inc. (AUHI) an intercompany debenture in the principal amount of \$20,000,000, maturing on June 1, 2020 (the AUI 2012 debenture).
 - ii. Approving the purposes of the issue.
 - iii. Approving the issue date for the AUI 2012 debenture as the same date of AUC approval.
 - iv. Approving the annual coupon rate of 4.07 per cent and annual issue cost of 0.07 per cent.
 - v. Providing such further and other relief as AUI may request and the AUC may grant in the circumstances.
3. AUI also requested Commission approval by no later than June 1, 2012, so that the interest payment dates for this debt issuance mirror the interest payment dates of the most immediately preceding term debt issuance by AUI's ultimate parent, AltaGas Ltd. (AL).
4. The Commission issued a notice of application on April 23, 2012, which included a deadline for the filing of statements of intent to participate (SIPs) of May 7, 2012. The Commission did not receive any SIPs for the AUI 2012 debenture application.
5. After reviewing the AUI 2012 debenture application, the Commission determined that there was a need for further information and on May 2, 2012 issued a preliminary information request to AUI with a response due date of May 4, 2012 .
6. For the purposes of this decision, the Commission considers the record closed on May 7, 2012, which was the deadline for SIPs to be submitted.

2 Background

7. AUI is the owner 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,

8. Consequently, AUI is required to obtain approval from the Commission before issuing any bonds or other forms of indebtedness for terms greater than one year.

3 Discussion of issues

9. In the prospectus attached to the debenture application, AUI submitted that the net proceeds from the issuance of the AUI 2012 debenture will be used to pay down existing bank indebtedness and for general corporate purposes.

10. AUI provided an affidavit from the president of AUHI in support of the AUI 2012 debenture application.

11. It has been AUI's long-standing practice to finance primarily with long-term debt facilities so that its financings more closely align with the long term nature of utility assets.¹ It has also been AUI's practice to obtain long-term debt financing from its ultimate corporate parent, AL, through its direct corporate parent, AUHI.²

12. According to the directive established by the AUC in Decision [2009-176](#),³ if AUI obtains intercompany debt financing, the rates for debt incurred by the ultimate corporate parent should be applied to the debt of AUI. Therefore, in compliance with the AUC's directive, AUI determined that when it is in need of long-term fixed rate debt financing it will borrow intercompany debt at the same annual coupon rate as AL's most immediately preceding term debt issuance to the market.⁴

13. AUI submitted that the most immediately preceding term debt issuance by AL to the market was dated April 10, 2012, and consisted of \$200,000,000 medium-term notes at a coupon rate of 4.07 per cent with a maturity date of June 1, 2020 (the AL \$200 million eight-year MTN).⁵ Consistent with the directives in Decision 2009-176, the annual coupon rate, issue costs and the maturity date of the AUI 2012 debenture are the same as the AL \$200 million eight-year MTN.

¹ Exhibit 1, AUI 2012 Debenture Application, Affidavit of John Lowe, page 3, paragraph 19.

² Exhibit 1, AUI 2012 Debenture Application, Affidavit of John Lowe, page 2, paragraph 12.

³ Decision 2009-176: AltaGas Utilities Inc. 2008-2009 General Rate Application Phase I, Application No. 1579247, Proceeding ID No. 88, October 29, 2009, page 80, paragraph 387.

⁴ Exhibit 1, AUI 2012 Debenture Application, Affidavit of John Lowe, page 2, paragraph 14.

⁵ Exhibit 1, AUI 2012 Debenture Application, Affidavit of John Lowe, page 2, paragraph 15.

14. AUI proposed the annual issue costs for the AUI 2012 debenture to be 0.07 per cent per annum and stated in the application that the calculations for the issue costs are consistent with the Commission direction given in Decision 2012-091.^{6 7} The 0.07 per cent is the AUI pro rata allocation of the estimated issuance cost incurred by AL for the issuance of its \$200 million eight-year MTN. The calculation of the issue costs were attached to the application as Exhibit B to the affidavit.

15. Annual coupon and issue costs for the AUI 2012 debenture are proposed by AUI to be calculated and payable semi-annually. The first interest payment date would be June 1, 2012, which would be the same date as the first interest payment date of the AL \$200 million eight-year MTN. In addition to Exhibit B the following were attached to the affidavit in the application:

- Exhibit A in Schedule A was the form of the AUI 2012 debenture which, among other things, sets forth and specifies the terms and conditions upon which the debenture is issued and held and the rights of AL and AUI.
- Exhibit C was a copy of the AL Pricing Supplement, the Prospectus Supplement and Base Shelf Prospectus for the AL \$200 million eight-year MTN.
- Exhibit D was a certified copy of a resolution of the board of directors of AUI passed on April 18, 2012, approving the creation of the AUI 2012 debenture, subject to obtaining an order of the AUC approving the same.
- Exhibit E was 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.

4 Commission findings

16. In determining whether to approve AUI's requested 2012 debenture, the Commission must consider Section 26(2) of the *Gas Utilities Act* reproduced in paragraph 7 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.

17. 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 Alberta legal counsel to confirm that the public 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 19, 2012, the Commission is satisfied that due diligence is

⁶ Exhibit 1, AUI 2012 Debenture Application, Affidavit of John Lowe, page 3, paragraph 21(e).

⁷ Decision 2012-091: AltaGas Utilities Inc. 2010-2012 General Rate Application – Phase I, April 9, 2012, Proceeding ID No. 904, April 9, 2012, page 49, paragraph 222.

being exercised and steps have been taken to ensure that the issuance is to be made in accordance with law.

18. The Commission has reviewed the debenture application and finds that the proposed debt issue under consideration appears to be in the public interest for purposes of replacing existing debt or financing activities that will be used in the operation of the gas utility.

19. The Commission finds that the requirements of Section 26(2)(a) of the *Gas Utilities Act* have been met and approves the purposes of AUI's debt issuance and authorizes its issuance.

20. While the Commission approves the purposes of the proposed AUI 2012 debenture with respect to the debenture application, the Commission advises that details related to the AUI 2012 debenture discussed herein may be reviewed by the Commission in a future AUI rates and technical filing, following the release of the Commission's decision in the Rate Regulation Initiative (Proceeding ID No. 566).⁸

5 Order

21. It is hereby ordered that:

- (1) Pursuant to Section 26(2)(a)(ii) of the *Gas Utilities Act* the issue by AltaGas Utilities Inc. of an intercompany debenture in the principal amount of \$20,000,000 on June 1, 2012 that matures on June 1, 2020, with an issue cost of 0.07 per cent is authorized in accordance with the findings in this decision and its purposes approved.
- (2) The long-term debt, including the actual interest rate, amount, term and issue costs thereof, issued pursuant to this order, may be subject to review and assessment as part of an AltaGas Utilities Inc.'s rates and technical filing following the release of the Commission's decision in the Rate Regulation Initiative (Proceeding ID No. 566).

Dated on May 31, 2012.

The Alberta Utilities Commission

(original signed by)

Bill Lyttle
Commission Member

⁸ Rate Regulation Initiative, Application No. 1606029, Proceeding ID No. 566.

Appendix 1 – Proceeding participants

Name of organization (abbreviation)
counsel or representative

AltaGas Utilities Inc. (AUI)
N. J. McKenzie

The Alberta Utilities Commission

Commission Panel

B. Lyttle, Commission Member

Commission Staff

J. Petch (Commission counsel)

N. Mahbub

C. Pham

P. Howard