



AUC

Alberta Utilities Commission

ATCO Gas and Pipelines Ltd.

Issuance of Preferred Shares to CU Inc.

February 17, 2011



The Alberta Utilities Commission

Decision 2011-055: ATCO Gas and Pipelines Ltd.

Issuance of Preferred Shares to CU Inc.

Application No. 1606853

Proceeding ID No. 1004

February 17, 2011

Published by

The Alberta Utilities Commission

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1 Introduction and process

1. ATCO Gas and Pipelines Ltd. (AGPL) filed an application on December 15, 2010, with the Alberta Utilities Commission (the AUC or the Commission) for approval to issue to CU Inc. 1,440,000 cumulative redeemable second preferred shares series 4 (series 4 preferred shares) at \$25.00 per share and up to 1,440,000 cumulative redeemable second preferred shares series 5 (series 5 preferred shares) upon conversion of the cumulative redeemable second preferred shares series 4 at the option of the holder (share issue). CU Inc. owns all the common shares of ATCO Gas and Pipelines Ltd.

2. Notice of the application was issued electronically on December 21, 2010, to parties on the Commission's gas and pipeline rates notice list. The notice requested that interested parties file their statement of intent to participate and any objections regarding the application by January 7, 2011. The Commission received no statements of intent to participate by the deadline date.

3. On January 13, 2011, the Commission issued a letter in which it set out the process schedule for dealing with the application. In this letter, the Commission indicated a need to test the application with a round of information requests to ATCO Gas and Pipelines Ltd. The Commission advised AGPL that testing would not be limited to dividend rates, redemptions, and expiration rates but rather all parts of the application were available to be tested. The deadline for the submission of the information requests (IRs) to AGPL was January 27, 2011; responses to the IRs had to be filed by February 10, 2011, and written argument, if needed, was to be submitted on February 17, 2011.

4. On January 19, 2011, the Commission received a letter from ATCO Gas and Pipelines Ltd. requesting an expedited process for the application. ATCO Gas and Pipelines Ltd. indicated in its letter that the close of its books for the 2010 year for financial statement purposes would be around February 18, 2011, and requested that the Commission issue its decision on this application prior to this date so that ATCO Gas and Pipelines Ltd. would be able to incorporate the outcome of this decision into its financial statements for 2010. On January 21, 2011, the Commission issued the following revised process schedule for the application:

<u>Process Step</u>	<u>Deadline Date</u>
Information requests to AGPL	January 25, 2011 – 12 p.m.
Information responses from AGPL	January 28, 2011 – 9 a.m.
Argument	February 2, 2011 – 4 p.m.
Reply argument	February 7, 2011 – 4 p.m.

5. The Commission issued its IRs to AGPL on January 21, 2011.
6. On January 26, 2011, the Commission received a letter from the Consumers' Coalition of Alberta (CCA) requesting that it be added as an interested party to the proceeding. The CCA advised that the Commission's IRs were comprehensive and as a result the CCA had no need to file any IRs. In a letter also dated January 26, 2011, the Commission responded to the CCA's request. The Commission considered that no deadline was affected by the CCA's late filing and therefore, added the CCA to the list of interested parties for the application.
7. For purposes of this decision, the Commission considers that the record closed on February 7, 2011, with the submission of AGPL's reply argument.
8. 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 Details of the application

9. On December 2, 2010, CU Inc. completed the sale of 3,000,000 series 4 preferred shares to the public at \$25.00 per share to yield 3.80 per cent, a total value of \$75,000,000. ATCO Gas and Pipelines Ltd. indicated in its application that the share issue was made in compliance with Decisions [U99115](#)¹ and [U99118](#)² of the Commission which, among other things, gives CU Inc. an exemption from the requirement to obtain approval of the Commission prior to issuing securities.³ All of the proceeds of the sale were advanced by CU Inc. to ATCO Gas and Pipelines Ltd. and ATCO Electric Ltd. on December 2, 2010, subject to the assumption by these companies of their pro rata share of the fees and expenses to be paid by CU Inc. in connection with this issue. Accordingly, it was proposed that AGPL issue 1,440,000 series 4 preferred shares to CU Inc. at \$25.00 per share in respect of the advance of \$36,000,000 made to AGPL by CU Inc. The remainder of the proceeds of the sale was advanced to ATCO Electric Ltd.
10. The estimated net proceeds from the sale of the series 4 preferred shares from AGPL to CU Inc. will amount to approximately \$35,008,000 after deducting ATCO Gas and Pipelines Ltd.'s pro rata share of the fees and estimated expenses to be paid by CU Inc. in connection with the issue of CU Inc.'s series 4 preferred shares. Of these net proceeds, \$30,632,000 will be allocated to the ATCO Gas division of ATCO Gas and Pipelines Ltd. and \$4,376,000 will be allocated to the ATCO Pipelines division.
11. AGPL indicated that the proposed issue of its series 4 preferred shares will have no effect on the control of the company or on the voting power related to the shares of ATCO Gas and Pipelines Ltd.

¹ Decision U99115, CU Inc., Regarding exemption from certain sections of Public Utilities Board Act and Gas Utilities Act, Issued November 23, 1999.

² Decision U99118, CU Inc., Variance of the Order Approved as part of Decision U99115, Issued December 21, 1999.

³ Exhibit 1.00, AGPL application, page 1.

12. In the application, ATCO Gas and Pipelines Ltd. provided further details regarding the series 4 preferred shares and the series 5 preferred shares as follows:

- The dividend rate payable by ATCO Gas and Pipelines Ltd. on the series 4 preferred shares to be issued to CU Inc. is the rate payable by CU Inc. on its series 4 preferred shares. Until June 1, 2016, the dividend rate will be fixed at \$0.95 per share per annum. On June 1, 2016, and on June 1 in every fifth year thereafter, the dividend rate will be reset to a rate equal to the then current rate on a five-year government of Canada bond plus 1.36 per cent. On June 1, 2016, and on June 1 in every fifth year thereafter, ATCO Gas and Pipelines Ltd. may, at its option, redeem for cash the series 4 preferred shares, in whole at any time or in part from time to time, at \$25.00 per share plus all accrued and unpaid dividends thereon.
- On June 1, 2016, and on June 1 in every fifth year thereafter, holders of series 4 preferred shares will have the right to convert their series 4 preferred shares into series 5 preferred shares. The dividend rate payable on the series 5 preferred shares will be set each quarter at a rate equal to the rate on a three-month government of Canada treasury bill plus 1.36 per cent. Holders of series 5 preferred shares will have the right to convert their shares into series 4 preferred shares on June 1, 2021, and on June 1 in every fifth year thereafter. The series 4 preferred shares and the series 5 preferred shares are series of shares of the same class and, other than different dividend rights, the series 4 preferred share and series 5 preferred shares are identical in all material respects. ATCO Gas and Pipelines Ltd. may, at its option, redeem all or any part of the series 5 preferred shares at \$25.00 per share in the case of a redemption on June 1, 2021, or on June 1 in every fifth year thereafter, or at \$25.50 per share in the case of a redemption on any other date after June 1, 2021, plus, in each case, all accrued and unpaid dividends thereon.

13. Through the interrogatory process, the Commission requested further details regarding the redemption options and the conversion options associated with the series 4 preferred shares and the series 5 preferred shares.⁴ In response, AGPL provided the information requested, including confirmation that AGPL can purchase the series 4 preferred shares and the series 5 preferred shares for cancellation anytime after their issuance. AGPL also indicated that while the decisions concerning redemptions, purchase for cancellation, and conversions are independent for AGPL, from a regulatory precedent perspective and in order to maintain the mirrored financing principle, the actions of CU Inc. and AGPL would be the same regarding any redemptions, purchase for cancellation and conversions.⁵

14. ATCO Gas and Pipelines Ltd. indicated that the proposed share issue would help maintain its capital structure at the levels established in Decision 2009-216.⁶ The pro forma capital structures for the ATCO Gas division and the ATCO Pipelines division after giving effect to these issues is shown in the table below.

⁴ Exhibit 8.01, AUC-AGPL-4, AUC-AGPL-5, AUC-AGPL-6.

⁵ Exhibit 11.02, responses to AUC-AGPL-4, AUC-AGPL-5, AUC-AGPL-6.

⁶ Decision 2009-216, Generic Cost of Capital, Issued November 12, 2009.

Table 1. Pro Forma capital structures of ATCO Gas division and ATCO Pipelines division after proposed share issue⁷

	September 30, 2010		September 30, 2010 As Adjusted ⁽¹⁾	
	Amount (\$000,000's)	Percent (%)	Amount (\$000,000's)	Percent (%)
ATCO Gas				
Long Term Debt	780.70	53.5	780.70	52.3
Preferred Shares	96.80	6.6	128.30	8.6
Common Equity	583.10	39.9	583.10	39.1
Total	1,460.60	100.0	1,492.10	100.0
ATCO Pipelines				
Long Term Debt	406.30	50.1	406.30	49.8
Preferred Shares	39.90	4.9	44.40	5.5
Common Equity	365.00	45.0	365.00	44.7
Total	811.20	100.0	815.70	100.0
Note:				
(1) After giving effect to the issue of the series 4 preferred shares.				

15. AGPL submitted as part of the application an opinion letter from its legal counsel, Bennett Jones LLP,⁸ which opines, among other things, that ATCO Gas and Pipelines Ltd. has complied with the securities laws of the province of Alberta, being the province in which the series 4 preferred shares will be issued.

3 Discussion of issues and Commission findings

16. In determining whether to grant AGPL's application, the Commission must consider Section 26(2)(a)(i) of the *Gas Utilities Act*. Therefore, the primary focus of this application is to determine (a) whether the proposed issue is to be made in accordance with law and (b) whether the Commission approves the purpose of the issue.

3.1 Whether the proposed issue is to be made in accordance with law

17. In determining whether a share 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 shares proposed and that the form and content of the share issuance is in compliance with applicable laws.

18. Based on the opinion provided by AGPL's legal counsel, Bennett Jones LLP, dated December 13, 2010, the Commission is satisfied that the proposed series 4 preferred shares issuance will be made in accordance with law.

⁷ Exhibit 1.00, AGPL application, Exhibit D.

⁸ Exhibit 1.00, AGPL application, Exhibit E.

3.2 Purpose of the issue

19. The Commission is satisfied, based on AGPL's submissions, that the share issue will be used to finance capital expenditures and will help maintain a capital structure for AGPL at levels approved by the Commission. For these reasons, the Commission approves the stated purposes for the issuance of the preferred shares.

3.3 Cumulative redeemable preferred shares

20. The Commission requested more information from AGPL regarding exactly what the company was expecting the Commission to approve in this application. In AUC-AGPL-3(b),⁹ the Commission questioned whether it could approve the series 4 preferred shares without approving the series 5 preferred shares. The Commission inquired in AUC-AGPL-3(d) as follows:

“Is it the understanding of ATCO Gas and Pipelines Ltd. that if the application is approved as filed that ATCO Gas and Pipelines Ltd. would not have to seek approval from the Alberta Utilities Commission with regard to: (1) issuing Series 5 Preferred Shares; (2) resetting the dividend rate on the Series 4 Preferred Shares on June 1, 2016, and on June 1 in every fifth year thereafter; (3) redeeming any of the Series 4 Preferred Shares on June 1, 2016, and on June 1 in every fifth year thereafter; (4) setting the dividend rate on the Series 5 Preferred Shares each quarter.”

21. One of the Commission's concerns in asking these questions was due to the dividend rates for the series 4 preferred shares and the series 5 preferred shares effective June 1, 2016, being unknown at this time. If AGPL was requesting the Commission to approve the issue of the series 4 preferred shares and the series 5 preferred shares, along with their resultant terms for establishing dividend rates effective June 1, 2016, the Commission was concerned with how it could currently determine that the dividend rates established June 1, 2016, would result in just and reasonable rates effective June 1, 2016, given that it is unknown at this time what those dividend rates will be.

22. In its response to AUC-AGPL-3(b),¹⁰ AGPL indicated that it was requesting that the Commission authorize the issuance of the series 4 preferred shares and the series 5 preferred shares. In response to AUC-AGPL-3(d), AGPL confirmed its understanding of the four items included in that information request (as stated in paragraph number 20 above). However, in response to AUC-AGPL-3(b), AGPL also stated that “This application is not requesting approval from the Commission to include in the revenue requirement of either ATCO Gas or ATCO Pipelines the preferred share dividend amounts of either the Series 4 or Series 5 Preferred Shares. The request for inclusion of the dividend rates will form part of the general rate applications of the ATCO Utilities.” Further, in response to AUC-AGPL-3(d), AGPL added that “The ATCO Utilities are not asking the Commission to rule, at this time, on the prudence of the dividend rate or the specific terms and conditions of the issue. Nor are they asking the Commission to determine whether just and reasonable rates will be in place effective June 1, 2016. Those determinations can only be made by the Commission after the ATCO Utilities make the necessary decisions as to the options available related to these preferred shares.”

23. Although the Commission does not rule on the prudence of the share issue at this time, the Commission takes comfort in the fact that AGPL stated that if at the time when the dividend rates reset, by the formula indicated in paragraph 12 above, and a cost rate results which is not

⁹ Exhibit 8.01.

¹⁰ Exhibit 11.02.

reflective of the then current market rates of debt, then AGPL can and will redeem the preferred shares.¹¹ Further, AGPL stated in its responses to AUC-AGPL-4 and AUC-AGPL-6 that the option to redeem shares is available at the individual specific utility level, i.e. AGPL can, at its option, redeem the series 4 preferred shares from CU Inc. which in turn would redeem the equivalent number of shares from the public. The Commission considers that this redemption option does not restrict nor limit the Commissions' ability to judge and approve prudence of the share issue going forward at the time of the relevant General Rate Application.

3.4 Preferred shares versus long term debt

24. Through the interrogatory process, the Commission inquired about the range for the preferred share component of the ATCO Utilities¹² that had been discussed during the ATCO Utilities 2005-2007 Common Matters Application.¹³ In addition, the Commission asked why AGPL chose to issue preferred shares instead of long term debt, and asked AGPL to provide the impact on the interest coverage ratios of both the ATCO Gas division and the ATCO Pipelines division if debentures had been issued instead of preferred shares.¹⁴ The Commission also requested AGPL to comment on the ratio of preferred shares to long term debt in the combined capital structure of the ATCO Utilities.¹⁵

25. In the 2005-2007 ATCO Utilities Common Matters application, a witness for the ATCO Utilities testified that an analysis from a number of years ago would have indicated an optimum range of five to ten per cent for the preferred share component of the capital structure of the ATCO Utilities. In AUC-AGPL-1, the Commission requested AGPL to provide the year in which that analysis had been prepared and to provide an updated analysis, if one had been undertaken. In response to AUC-AGPL-1,¹⁶ ATCO Gas and Pipelines Ltd. stated that in the short time available it was not able to locate the analysis and that no update of the analysis was on file. In the same response, AGPL provided an analysis¹⁷ which it stated examined the basic reason why the five to ten per cent range is appropriate. ATCO Gas and Pipelines Ltd. submitted that the reason this range is still appropriate is because it allows the ATCO Utilities to enhance their credit metrics to maintain CU Inc.'s A credit rating while not excessively increasing the cost to customers.¹⁸ ATCO Gas and Pipelines Ltd. also stated that since 1999 every ATCO Utility rate application has either referenced this optimal range or has filed with a preferred share component within this optimal range.¹⁹

26. In its response to AUC-AGPL-2(d),²⁰ AGPL stated that it elected to issue preferred shares rather than debentures for a number of reasons. These reasons included that the form of preferred shares issued by AGPL are perpetual in nature and do not subject AGPL to refinancing risk. AGPL indicated that five year debentures are subject to both interest rate risk and refinancing risk. Another reason given by AGPL was that the preferred dividend rate of 3.8 per cent and the

¹¹ Exhibit 11.02, information responses, AUC-AGPL-3(e&f).

¹² The ATCO Utilities were defined as collectively ATCO Gas (North and South), ATCO Electric (transmission and distribution), and ATCO Pipelines (North and South) in Decision 2006-100 on the ATCO Utilities 2005-2007 Common Matters Application.

¹³ Exhibit 8.01, AUC-AGPL-1.

¹⁴ Exhibit 8.01, AUC-AGPL-2.

¹⁵ Exhibit 8.01, AUC-AGPL-8.

¹⁶ Exhibit 11.01.

¹⁷ Exhibit 11.01, AUC-AGPL-1(b), Attachment 1.

¹⁸ Exhibit 11.01, response to AUC-AGPL-1(b).

¹⁹ Ibid.

²⁰ Exhibit 11.01.

reset spread of 136 are the lowest all-in rate and reset spread ever made available to CU Inc. and among the lowest rate available to any utility in Canada.

27. In response to AUC-AGPL-2(e) and (f), AGPL provided the impacts on the interest coverage ratios as discussed in paragraph number 24 above. While the analyses included in the response demonstrated that customers would have benefitted if debentures had been issued instead of preferred shares, the analyses also indicated that the earnings before interest and taxes (EBIT) interest coverage ratios would have been reduced.

28. With regard to the ratio of preferred shares to long term debt, ATCO Gas and Pipelines Ltd. submitted in response to AUC-AGPL-8(f) that while it does not disagree that the relative proportion of preferred shares in the capital structure of the ATCO Utilities has increased since the 2005-2007 Common Matters Application, the cost of preferred shares has declined to a greater extent than the cost of debt or common equity. AGPL added that the decrease in tax rates and the decrease in nominal dividend rates have also contributed to the improvement in the pre tax cost of preferred shares relative to other forms of financing.

29. In its argument, the CCA submitted that given the relative proximity of long term debt rates and pre tax preferred share dividend rates, at the present time there is justification for increasing the proportion of preferred shares as requested by the ATCO Utilities, as it helps to improve the interest coverage ratios. However, the CCA also mentioned that this is a relationship that may change at the time of the dividend reset for the preferred shares.²¹ The CCA recommended that AGPL be directed to review the prudence of this relationship at the time of the dividend reset on June 1, 2016, and every five years thereafter. The CCA submitted that this review be done in the context of an applicable rate proceeding.

30. In its reply argument,²² AGPL stated that it accepted that the prudence of the financing transactions will be reviewed at the time of its next General Rate Application (GRA), a position which it had put forward in its argument.

31. In its argument, ATCO Gas and Pipelines Ltd. submitted that a proper testing of the prudence of any financing decisions takes place in the same forum as where the prudence of other utility decisions is undertaken, the utility specific GRA or General Tariff Application (GTA).²³ AGPL submitted that “The prudence of the issue, the dividend rate, terms of the re-set, redemption and purchase for cancellation options, the interest rates and other material terms and conditions are not the fundamental concern of a funding application. The appropriate forum for a review of such matters is at a GRA or a GTA where these matters will be part of the revenue requirement determined by the Commission.”²⁴

32. The Commission agrees with this and historically the GRA or GTA is where the Commission has tested the prudence of utility financing decisions. The Commission will not make any direction or determination regarding the optimal level of preferred shares versus long term debt in this decision; however, the Commission is concerned about the increasing levels and expense of preferred shares and believes that long term debt provides a viable alternative which should be considered by ATCO Gas and Pipelines Ltd. when making future financing decisions.

²¹ Exhibit 13.01, CCA argument, paragraph 5.

²² Exhibit 14.01.

²³ Exhibit 12.02, AGPL argument, paragraph 8.

²⁴ Exhibit 12.02, AGPL argument, paragraph 7.

33. The Commission is not making any findings with regard to the prudence of the share issue, including the dividend rates, the decision to issue preferred shares instead of debentures, and the analysis prepared by AGPL to support its five to ten per cent optimal range for preferred shares.

3.5 Effective date of the proposed share issue

34. ATCO Gas and Pipelines Ltd. submitted that the preferred shares would be issued within two business days following Commission approval. In keeping with previous financings for the ATCO Utilities, the preferred shares would be treated as if they had been issued on the date CU Inc. closed its financing and the cash proceeds were mirrored to ATCO Gas and Pipelines Ltd. In other words, the preferred shares would have an effective date of December 2, 2010. ATCO Gas and Pipelines Ltd. submitted that to date the preferred shares with a date other than December 2, 2010, would give rise to four concerns:

- CU Inc. has adhered to the “mirroring concept” when it has raised financing for the ATCO Utilities. The rate differences between the time of the CU Inc. closing and the Commission approved issue date would result in concerns that customers have paid too much or too little for the financing received.
- For income tax purposes, it is a requirement that related parties charge fair market value for transactions between the parties. To the extent fair market value is not used, the Canada Revenue Agency could deem that the amounts charged must be based on fair market value rates at the Commission approved issue date of the transaction. This would likely result in a different dividend rate (either higher or lower) than the CU Inc. rate due to the fact that the two financings occurred at different times.
- A mismatch of the CU Inc. closing with the Commission approved issue date would impact the ATCO Utilities’ ability to obtain financing to effectively balance its capital structure to Commission approved levels.
- A change to the effective date of the preferred shares would also necessitate a change to the Directors Resolution, which would require Board of Directors’ approval.

35. As noted above, ATCO Gas and Pipelines Ltd. proposed to issue the preferred shares to be dated effective December 2, 2010. No parties objected to this.

36. In the absence of an exemption from the provisions required under Section 26 of the *Gas Utilities Act*, the Commission expects to receive an application under that section far enough in advance to enable the application to be reviewed and a decision rendered in advance of the proposed date of issuance. That was not the case in this instance. However, for the following reasons the Commission finds that an effective date of December 2, 2010, for the preferred shares is warranted.

37. The Commission has reviewed the exemptions provided to CU Inc. which, among other things, gives CU Inc. an exemption from the requirement to obtain approval of the Commission prior to issuing securities. CU Inc. as a holding company whose principal operating subsidiaries are ATCO Electric Ltd. and ATCO Gas and Pipelines Ltd., is the vehicle through which financing is obtained through the capital market for both ATCO Electric Ltd. and ATCO Gas and Pipelines Ltd. ATCO Electric Ltd. and ATCO Gas and Pipelines Ltd. currently are unable to access the capital markets on their own. Instead, all market financing activities for these two corporations are performed by CU Inc. The exemption CU Inc. has been granted allows CU Inc.

to closely monitor the capital markets and address the financing needs of its subsidiaries when circumstances appear most favourable.

38. Once CU Inc. makes financing arrangements in the capital market on behalf of ATCO Electric Ltd. and ATCO Gas and Pipelines Ltd., these financing arrangements, as well as the funds derived from them, have to be reflected in the financial records of CU Inc., as it is the legal issuer of the securities. In order for ATCO Electric Ltd. and ATCO Gas and Pipelines Ltd. to receive these funds, and reflect them in their financial records, these companies have to make financing arrangements with CU Inc. The long standing practice in making the financing arrangements between ATCO Electric Ltd. and CU Inc., and ATCO Gas and Pipelines Ltd. and CU Inc., is to make these financing arrangements exactly the same as the arrangements CU Inc. made when it arranged financing in the capital markets. This practice is what is described as the mirroring concept.

39. In response to AUC-AGPL-3,²⁵ AGPL stated that CU Inc. and prior to it Canadian Utilities Limited, has adhered to the mirroring concept when raising financing for the ATCO Utilities. AGPL added that to treat the preferred shares it is proposing to issue to CU Inc. as if they had an effective date different than the CU Inc. closing date would “shatter the mirror”. The Commission agrees that the mirroring concept is predicated upon the exact replication of the financing arrangements, including the effective issue date. To give the preferred shares an effective date different than the CU Inc. closing date would be contrary to the mirroring concept.

40. While the Commission accepts the mirroring concept it also considers that there should not be an excessive delay between the time when CU Inc. issues its securities in the market and when the regulated utilities file an application to effectively mirror this transaction. Any excessive delay could cast light on whether the financing obtained by CU Inc. was intended to be ultimately advanced to the regulated utilities. In this case, CU Inc. issued its preferred shares in the market place on December 2, 2010, and on December 15, 2010, ATCO Gas and Pipelines Ltd. filed this application to mirror that transaction. The Commission finds that this timing of less than two weeks is not excessive.

41. As well, as part of the exemption provided to CU Inc., prior to the closing date of any transaction that would require Commission approval, CU Inc. is required to file a summary form of the particulars of the transaction with the Commission. The Commission finds that this summary form provides the Commission with notification and terms of any issuance and gives the Commission the necessary regulatory oversight of the companies owned by CU Inc. In this case, such a summary form was filed with the Commission on November 16, 2010,²⁶ which was 16 days before CU Inc. completed its financing arrangement.

42. For these reasons, the Commission finds that the preferred shares should be given an effective date of December 2, 2010.

3.6 General Rate Applications

43. The Commission states that nothing in the decision will bind, affect or prejudice the Commission’s consideration of any matter relating to the cost of capital for the ATCO Gas Division of AGPL and the ATCO Pipelines Division of AGPL in future proceedings. Specifically, the Commission retains the ability to exercise regulatory scrutiny and to review the

²⁵ Exhibit 11.02.

²⁶ Application No. 1606765.

cost of capital with respect to the outstanding debt or preferred shares of these two divisions of AGPL during its consideration of the next general rate applications submitted by these two divisions. The Commission will address prudence of the share issue for ATCO Gas in its current 2011-2012 general rate application which is currently before the Commission, Application No. 1606822, Proceeding ID No. 969.

4 Order

44. It is hereby ordered that:

ATCO Gas and Pipelines Ltd. is authorized to issue 1,440,000 Cumulative Redeemable Second Preferred Shares Series 4 at \$25.00 per share to CU Inc., and up to 1,440,000 Cumulative Redeemable Second Preferred Shares Series 5 upon conversion of the Cumulative Redeemable Second Preferred Shares Series 4 at the option of the holder.

Dated on February 17, 2011.

The Alberta Utilities Commission

(original signed by)

Bill Lyttle
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) counsel or representative
ATCO Gas and Pipelines Ltd. (AGPL) D. Werstiuk
The Consumers' Coalition of Alberta (CCA) J. Wachowich

The Alberta Utilities Commission
Commission Panel B. Lyttle, Commission Member
Commission Staff S. Ramdin (Commission counsel) S. Karim D. Mitchell