



AltaGas Utilities Inc.

Inter-Affiliate Code of Conduct Exemptions

March 1, 2010



ALBERTA UTILITIES COMMISSION
Decision 2010-085: AltaGas Utilities Inc.
Inter-Affiliate Code of Conduct Exemptions
Application No. 1605520
Proceeding ID. 340

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1 INTRODUCTION

1. On October 9, 2009, the Alberta Utilities Commission (AUC or Commission) received an application (the Application) from AltaGas Utilities Inc. (AUI). The application requested an exemption, pursuant to section 2.6 of AUI's Inter-Affiliate Code of Conduct (the Code), from the provisions of section 3.3.1 of the Code, which deals with sharing of employees. AUI requested an exemption for services provided by AUI employees to AUI's affiliates.

2. The Commission issued a notice of application on November 10, 2009. The Commission received statements of intent to participate (SIPs) from the following parties:

- ATCO Gas, ATCO Electric and ATCO Pipelines (ATCO);
- EPCOR Utilities Inc. (EPCOR); and
- The Consumers' Coalition of Alberta (CCA).

3. The CCA was the only party to express concerns about the Application, submitting both information requests and argument.

4. The Commission heard the Application through a written process. The Commission considers that the record of the proceeding closed on December 14, 2009 with the filing of reply argument.

2 DETAILS OF THE APPLICATION

5. In 2008, the Commission conducted an audit of AUI to examine how AUI was complying with the Code. In that audit the Commission found that AUI had not reported all instances where it shared employees with an affiliate as required under the Code. In response to the audit, AUI applied to the Commission for an exemption for the following services where:

- (a) the President of AUI provides occasional services to AltaGas Utility Group Inc. (AUGI) by:
 - (i) representing it at quarterly meetings of the Environment Occupational Health and Safety (EOH&S) Committee of the Heritage Gas Limited Board of Directors; and
 - (ii) reporting to the quarterly meetings of the EOH&S Committee of AUGI with respect to Heritage Gas Limited (HGL) and Inuvik Gas Ltd. (IGL); and,

- (b) AUI employees provide pipeline operating services to AltaGas Operating Partnership (AOP) with respect to the AOP Summerdale Pipeline.

((a)(i) and (a)(ii), above will hereinafter be referred to as the “EOH&S Services,”
(b) will hereinafter be referred to as the “Pipeline Operating Services”)

6. In the Application AUI seeks an exemption from section 3.3.1 of the Code. That section provides that a utility may share employees on a cost recovery basis provided that the employees to be shared:

- (a) do not have access to Confidential Information;
- (b) do not routinely participate in making decisions about Utility Services or how they are delivered;
- (c) do not routinely deal with or have direct contact with customers of the Utility; and
- (d) are not routinely involved in operating, planning or managing the business of the Utility, unless they comply with the exemption provided in section 3.1.4 of the Code (Separate Management Exception).

7. Using section 3.3.1 as a framework AUI submitted as follows:

- (a) Regarding EOH&S Services:

The President of AUI

- has access to confidential information, however, the integrity of that information is not compromised because the president does not use confidential information to provide the EOH&S services;
- routinely makes decisions about the provision of utility services, but the EOH&S Services do not affect AUI’s provision of utility service;
- does not have direct contact or routinely deal with AUI customers; and
- is routinely involved in operating, planning and managing the business of AUI but is not subject to the exemption provided under section 3.1.4 of the Code. AUI noted that his role providing EOH&S Services relates to fulfilling corporate governance, policy and strategic direction of a corporate group of businesses as a whole as provided for in section 3.1.4 of the Code.

- (b) Regarding Pipeline Operating Services:

The employees performing the Pipeline Operating Services

- have access to confidential information as part of their AUI responsibilities. However, the Pipeline Operating Services do not require the employees to access AUI’s customer information system, and there is no customer specific or

confidential information given or made available through the Pipeline Operating Services;

- do not routinely participate in making decisions about the provision of utility services;
- have routine and direct contact with customers, in order for AUI to provide safe and reliable gas service. However, AUI submitted that the Pipeline Operating Services do not result in the potential for the employees to influence AUI's customers; and
- are operating the business of AUI, but are gaining experience from performing the Pipeline Operating Services.

8. In the Application AUI indicated that it provides EOH&S Services on a full cost recovery basis and does not cross subsidize AUGI, HGL or IGL. AUI said that involvement of its president in the EOH&S Services provides him access to corporate best practices information that can benefit AUI's EOH&S program.

9. AUI also indicated that it provides the Pipeline Operating Services as a net benefit for AUI customers because AUI uses net revenue received from these services to offset its revenue requirement.

3 DISCUSSION OF ISSUES AND POSITIONS OF THE PARTIES

10. In argument and in its Application, AUI submitted that the purpose and objectives of the Code were relevant to the Commission's assessment of the Application.¹ AUI submitted that while the Code established standards and conditions for interactions between utilities and their non-utility affiliates, the Code also permits economies of scale and operating efficiencies. As such, AUI argued, the applied for exemptions fell within the spirit and intent of the Code.²

11. AUI argued that the EOH&S Services provide AUI with corporate best practices information that can benefit and improve occupational health, and worker and public safety. AUI argued the Pipeline Operating Services provide a benefit for AUI employees from gaining additional experience by operating the Summerdale Pipeline.

12. AUI argued that neither EOH&S Services nor the Pipeline Operating Services cause any harm to AUI customers. AUI recovers costs associated with both services, and in the case of the Pipeline Operating Services an amount in excess of fair market value, which offsets AUI's revenue requirement. AUI also reiterated that confidential information is not disclosed when it provides either the EOH&S Services or the Pipeline Operating Services.

13. AUI emphasized that the total amount of the EOH&S Services and Pipeline Operating Services was not significant. AUI submitted that the transactions were reasonable and

¹ Decision [2004-010](#), EPCOR Utilities Inc., Code of Conduct Exemption Application (Application No. 1316005) (Released: February 3, 2004).

² AUI Argument, pages 1-2.

appropriate, and were necessary for corporate governance objectives or for corporate efficiencies to be achieved.

14. The CCA said it was not convinced the exemption for EOH&S services was merited. The CCA submitted that benefits for operating efficiencies and economies of scale noted by AUI for the EOH&S Services were to the account of AUGI, AUI's non-utility parent, and not AUI.

15. The CCA also argued that the evidence does not indicate that AUI's president is any more or less qualified than another executive from its non-utility operations to provide the EOH&S Services.³ The CCA suggested that EOH&S "best practices" information is not limited to AUI's president and is available from numerous other sources including industry-related sources and AUI management.⁴ To avoid any actual or perceived violations of the Code, the CCA argued, it would be more reasonable for AUGI to appoint an executive from one of its non-utility operations.

16. The CCA recommended that the AUC deny the exemption for Pipeline Operating Services because it was desirable to maintain the sanctity of the Code and reduce the number of unnecessary exemptions from it.

17. The CCA asserted that an exemption for Pipeline Operating Services would dilute the intent and objective of the Code and that neither AUI nor its employees would be significantly affected if the AUC were to disallow the exemption. The CCA also asserted that any additional experience gained by AUI employees from providing the Pipeline Operating Services is marginal in comparison to the work they undertake on behalf of AUI. The CCA submitted that AOP is able to "obtain the services from third parties at similar market prices."⁵

18. The CCA submitted that the impact of denying the exemptions would be immaterial to AUI. The CCA submitted that the revenue accruing to AUI customers from the EOH&S Services (an estimate of \$7,000 for 2009) and the Pipeline Operating Services (\$4,080 per annum) is immaterial relative to AUI's revenue requirement (\$45 million).⁶

19. In reply, AUI disagreed with the CCA's "narrow interpretation of the exemption provisions of the Code that would in effect isolate AUI from its affiliates and negate the purpose of entire sections of the Code." AUI argued that:

(a) Regarding EOH&S Services:

- the corporate governance objectives of AUI benefit from the provision of EOH&S Services to AUGI because the AUGI group of companies includes AUI;
- the CCA's statement that the President has no more qualification than other senior executives from AUGI's non-utility affiliates is unsubstantiated. AUI said its president has previous EOH&S experience (as Director of Operations) and an extensive utility background;

³ CCA Argument, page 4, paragraph 6.

⁴ CCA Argument, page 4, paragraph 6, IR Response CCA-AUI-3(g).

⁵ CCA Argument page 6, paragraph 14, IR Response CCA-AUI-6(c).

⁶ CCA Argument, page 5, paragraph 8, IR Response CCA-AUI-3(b).

- AUI can obtain additional best practices through the EOH&S Services, which is a source of knowledge external to AUI. AUI said existing AUI employees' knowledge is already reflected in AUI's EOH&S policy; and
- the costs of the services are immaterial and that the small nature of the transactions only further supports finding that there is no harm to customers.

(b) Regarding Pipeline Operating Services:

- the CCA has not provided any evidence to contradict AUI's evidence of no harm to customers in respect of the Pipeline Operating Services; and
- the benefits to AUI and AOP justify the Pipeline Operating Services. If the service does not continue, AUI argued, its employees would lose the benefit of additional experience and knowledge of the Summerdale Pipeline.

4 VIEWS OF THE COMMISSION

20. In reaching the determinations contained within this decision, the Commission has considered the record of this proceeding, including the argument and reply 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 other relevant portions of the record with respect to that matter.

21. For the purpose of the Application AUI accepted how the Commission's predecessor, the Alberta Energy and Utilities Board (Board) had interpreted section 3.3.1 of the Code although AUI views that interpretation of section 3.3.1 as strict. The Board interpreted this section as including "all employees who perform any work on behalf of an affiliate, whether through a service agreement or by way of an occasional service or emergency service."⁷ AUI maintained that section 3.3.1 of the Code does not apply to a transaction where a Services Agreement (as defined in the Code) is in place or where Occasional Services (as defined in the Code) are provided. AUI relied on a strict interpretation of section 3.3.1 to argue that exemptions should be granted from the Code when the purpose of the Code would not be circumvented by the exemption.

22. The Commission, and its predecessor, have both held that an applicant for an exemption from the Code must satisfy the Commission that the exemption would not derogate from the purpose of the Code:⁸

In other words, the Code attempts to protect consumers from potentially damaging actions arising from affiliate transactions, while permitting economies of scale and operating efficiencies. Having said that, the existence of economies of scale and operating efficiencies of a proposed exemption is not a sole basis on which to grant the

⁷ Application 1517888, response letter from the Board to ATCO Gas dated October 5, 2007

⁸ Decision 2006-124: EPCOR Distribution Inc., EPCOR Transmission Inc., EPCOR Energy Inc. Inter-Affiliate Code of Conduct Exemptions (Application Nos. 1461252, 1461253 & 1461254) (Released: December 5, 2006), page 12.

exemption, particularly where in doing so would undermine the protection of customers. With inter-affiliate matters, the protection of customers must prevail, so as to prevent abuse or potential abuse of their interests. To find otherwise, would be contrary to the intent of the Code. ***Thus, an applicant seeking an exemption from the Code must satisfy the Board that its request does not derogate, overall, the purposes or objectives of the Code as noted above.*** [Emphasis added]

23. The purpose and objectives of the Code are stated in section 1.1:⁹

1.1 Purpose and Objectives of the Code

Purpose of the Code

The purpose of this Code is to establish standards and conditions for interaction between each ATCO Utility and its Utility and Non-Utility Affiliates. This Code attempts to anticipate and adjust for the potential misalignment of interest between shareholders and Utility customers occasioned by Affiliate interactions through the establishment of parameters for transactions, information sharing and the sharing of services and resources, while permitting economies of scale and operating efficiencies.

These parameters are intended to:

- (a) prevent Utilities from cross-subsidizing Affiliate activities;
- (b) protect confidential customer information collected in the course of providing Utility services;
- (c) ensure Affiliates and their customers do not have preferential access to Utility services; and
- (d) avoid uncompetitive practices between Utilities and their Affiliates, which may be detrimental to the interests of Utility customers.

Objectives of Code

While the overall purpose of the Code is to establish standards and parameters which prohibit inappropriate Affiliate conduct, preferences or advantages, which may adversely impact the customers of regulated businesses, this purpose reflects several important underlying objectives, including:

- (a) creating a clearly defined set of rules designed to enhance inter-affiliate transparency, fairness and senior management accountability with respect to inter-affiliate interactions impacting regulated businesses;
- (b) providing an environment in which inter-affiliate economies and efficiencies can legitimately occur for the mutual advantage of both a Utility's customers and its shareholders; ...

⁹ AUI Inter-Affiliate Code of Conduct, at page 1.

24. The Commission recognizes that section 2.6 of the Code allows a party to apply to the AUC for exemptions from any provision of the Code. The AUI Code, like other inter-affiliate codes of conduct, is based largely on the code approved for the ATCO group of companies in Decision 2003-040.¹⁰ The Commission refers to the Board's finding from Decision 2003-040 in relation to section 2.6:¹¹

The Board notes that situations might already exist, or arise from time to time, whereby ratepayers **or shareholders could be inadvertently harmed by the strict application of the Code. Accordingly, the Board understands that ATCO may seek exemptions from time to time from particular provisions of the Code.** [Emphasis added]

25. The Commission takes note of the CCA's concerns and in particular its concern that it is desirable not to dilute the intent and objectives of the Code. However, in this Application the Commission believes that AUI's exemption requests are within the scope intended for exemptions by Decision 2003-040 and section 2.6 of the Code.

26. The Commission has reviewed the purpose and objectives of the Code and finds that the requested exemptions are within the spirit and intent of the Code. AUI has ensured that there is no cross-subsidizing of the costs associated with the services. The EOH&S Occasional Services are provided to AUGI on a full cost recovery basis. The Pipeline Operating Services are provided to AOP under a for profit service agreement. The AUC recognizes that neither of the services requires the use of confidential information and that all AUI employees responsible for providing the services have been trained and have acknowledged the requirements of the Code and their compliance with the Code.

27. The Commission finds that AUI gains some benefit for both the EOH&S Service and Pipeline Operating Services. Best practices gained for Environment Occupational Health and Safety practices are beneficial not only to AUI but also for the interests of customers. There may be some operating efficiencies gained although the dollar amounts of the shared services are so low as to be immaterial in the context of the 2009 Revenue Requirement and the total amount of inter-affiliate transactions.

28. For these reasons the Commission is prepared to approve the exemptions with respect to section 3.3.1 of the Code for the EOH&S Services and Pipeline Operating Services as applied for. As required under section 7.6(1) of the Code, AUI should include these exemptions on the list of exemptions granted in its annual compliance report.

29. All inter-affiliate transactions including the EOH&S Services and Pipeline Operating Services are subject to audit under section 7.8 of the Inter-Affiliate Code of Conduct.

¹⁰ Decision 2003-040: ATCO Group, Affiliate Transactions and Code of Conduct Proceeding, Part B: Code of Conduct (Application No. 1237673) (Released: May 22, 2003).

¹¹ Decision 2003-040, page 40.

5 ORDER

30. IT IS HEREBY ORDERED THAT:

- (1) The Commission exempts the EOH&S Services and Pipeline Operating Services from the requirements of section 3.3.1 of Code.
- (2) AUI is to include in its Annual Compliance Report a complete list of exemptions granted from the requirements of the Code including those approved in this Decision.

Dated on March 1, 2010.

ALBERTA UTILITIES COMMISSION

(original signed by)

Carolyn Dahl Rees
Vice-Chair