



## **AltaGas Utilities Inc.**

**Issue of Common Shares to AltaGas Utility Holdings Inc.**

**March 4, 2010**



**ALBERTA UTILITIES COMMISSION**

Decision 2010-101: AltaGas Utilities Inc.

Issue of Common Shares to AltaGas Utility Holdings Inc.

Application No. 1605820

Proceeding ID. 466

March 4, 2010

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Alberta Utilities Commission

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## **1 INTRODUCTION**

1. AltaGas Utilities Inc. (AUI) applied to the Alberta Utilities Commission (AUC or Commission) under section 26(2)(a) of the *Gas Utilities Act* to issue up to 572,120 Class “A” Common Shares (Shares) at a price of \$30.0636 per share to AltaGas Utility Holding Inc. (AUHI) for the maximum aggregate consideration of \$17,200,000 (Application).

## **2 BACKGROUND**

2. Section 26(2)(a) of the *Gas Utilities Act* provides that:

- (2) No owner of a public 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 (...)

3. AUI filed the Application with the Commission on January 22, 2010. Notice of the Application was issued electronically on January 25, 2010. The notice requested that parties interested in intervening in the proceeding submit a statement of intent to participate (SIP) to the Commission by the deadline of 2:00 p.m., February 8, 2010.

4. No party filed a SIP with the Commission. The Commission considers the close of record of the proceeding to be February 8, 2010.

## **3 DETAILS OF THE APPLICATION**

5. In the Application, AUI requested an order from the Commission:

- a. Approving and authorizing AUI to issue up to \$17,200,000 of Class “A” Common Shares to AUHI;

- b. Approving the purposes of the issue; and
  - c. Such further and other relief as AUI may request and the Commission may grant in the circumstances.
6. In support of the Application, AUI relied on the Affidavit of Patricia Newson, President of AUHI, a written Resolution of the AUI Board of Directors, dated January 20, 2010 authorizing the issuance of Class “A” Common Shares to AUHI, and on the opinion of AUI’s legal counsel, MacPherson Leslie & Tyerman LLP.
7. The following table was provided by AUI and sets out the derivation of the price per share of the Shares:<sup>1</sup>

**AltaGas Utilities Inc.: Issue of Class A Common Shares**

A.	Common Shareholders Equity at December 31, 2009	\$46,978,962
B.	Number of Equity Shares Outstanding <sup>1</sup>	1,562,652
C.	Book Value Per Share (A/B)	\$30.0636
D.	Maximum Aggregate Value of Share Issuance	\$17,200,000
E.	Maximum Number of Class A Common Shares to be Issued (D/C)	572,120
<sup>1</sup> Aggregate number of common shares outstanding before giving effect to this issue.		

8. AUI stated that AUHI owns all of the Class “A” Common Shares of AUI and that the proposed issuance of the Shares will have no effect on the control of AUI, or on the voting power related to the shares of AUI.
9. AUI submitted that the proceeds from the sale of the Shares would be used to finance capital expenditures and for other general corporate purposes. Taking into consideration its 2010 capital requirements, AUI indicated that it was issuing the Shares in order to maintain a capital structure that approximates the capital structure approved by the Commission, including the 43 percent common equity ratio recently determined in [Decision 2009-216](#) relating to the 2009 Generic Cost of Capital proceeding.<sup>2</sup> A schedule setting out the pro forma capital structure of AUI after giving effect to the proposed share issuance was included as Exhibit “C” of the Application.
10. AUI indicated that if it issues Shares to a total value that is less than the maximum applied for, within thirty days from the date of such issue, AUI will advise the Commission of: the actual number and total value of common shares issued, the reasons for the lesser number and value, and the related impact on AUI’s common equity ratio.
11. The firm MacPherson, Leslie & Tyerman LLP, legal counsel for AUI, provided an opinion that the proposed share issuance was in compliance with the securities laws of the Province of Alberta, the province where the shares will be issued.<sup>3</sup> The opinion also stated that the proposed

<sup>1</sup> Exhibit 1; Exhibit “B”.

<sup>2</sup> Decision 2009-216: 2009 Generic Cost of Capital, (Application No. 1578571; Proceeding ID. 85), (Released: November 12, 2009).

<sup>3</sup> Exhibit 1; Exhibit “D”.

share issuance would not violate the provisions contained in any debentures which are presently contemplated to be issued by AUI, and are presently before the Commission for approval.<sup>4</sup>

#### **4 COMMISSION FINDINGS**

12. The Commission has reviewed the Application and is satisfied that the requirements of section 26(2)(a) of the *Gas Utilities Act* have been met.

13. In particular, based on the legal opinion of MacPherson, Leslie & Tyerman LLP, the Commission is satisfied that the issuance of the Shares will be made in accordance with law. The Commission is also satisfied, based on AUI's submissions, that the share issuance will be used to finance capital expenditures and for other corporate purposes, and that it will maintain a capital structure that approximates the capital structure approved by the Commission for AUI.

#### **5 ORDER**

14. IT IS HEREBY ORDERED THAT:

AltaGas Utilities Inc. is authorized to issue up to 572,120 Class "A" Common Shares to AltaGas Utility Holding Inc. with a share price of \$30.0636 per share, for the maximum aggregate consideration of \$17,200,000.

Dated on March 4, 2010.

#### **ALBERTA UTILITIES COMMISSION**

*(original signed by)*

Mark Kolesar  
Commissioner

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<sup>4</sup> Proceeding ID. 418 (Application 1605686).

## APPENDIX 1 – PROCEEDING PARTICIPANTS

Name of Organization (Abbreviation) Counsel or Representative (APPLICANTS)
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AltaGas Utilities Inc. (AUI) R. Koizumi
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Alberta Utilities Commission
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Commission Panel M. Kolesar, Commissioner
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Commission Staff V. Slawinski (Commission Counsel) W. MacKenzie U. Pillai
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