



ATCO Gas and Pipelines Ltd.

Issuance of Debentures and Preferred Shares

August 14, 2009



ALBERTA UTILITIES COMMISSION

Decision 2009-115: ATCO Gas and Pipelines Ltd.
Issuance of Debentures and Preferred Shares
Application Nos. 1605229, 1605230 and 1605231
Proceeding ID. 224

August 14, 2009

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ATCO GAS AND PIPELINES LTD.
ISSUANCE OF DEBENTURES AND PREFERRED SHARES

1 BACKGROUND

1. ATCO Gas and Pipelines Ltd. (AGP) filed three applications (the Applications) on June 29, 2009, with the Alberta Utilities Commission (AUC or the Commission) for approval pursuant to section 101(2)(a) of the *Public Utilities Act* to issue two debentures and Cumulative Redeemable Second Preferred Shares to its parent corporation, CU Inc.

2. The Applications were considered pursuant to section 101(2)(a) of the *Public Utilities Act*, R.S.A. 2000, c.P-45, as amended. Section 101(2)(a) of the *Public Utilities Act* provides:

101(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. Notice of the Applications was issued electronically on July 10, 2009, to parties on the Commission's Gas and Pipelines - Rates Notice List. In the Notice, the Commission stated that it may continue to process the Applications without further notice if no valid objections were received on or before July 27, 2009.

4. The Commission received no Statements of Intent to Participate from parties. Accordingly, the Commission considers the close of record to be July 27, 2009.

2 DETAILS OF APPLICATIONS

5. In the Applications, AGP applied to the AUC for approval to issue the following two debentures (Debentures) to CU Inc.:

Application #	Interest Rate	Principal Amount	Maturity Date
1605229	6.215%	\$4,000,000	March 6, 2024
1605230	6.50%	\$4,000,000	March 7, 2039

6. In addition to the Debentures, AGP also requested approval to issue to CU Inc. 1,080,000 Cumulative Redeemable Second Preferred Shares Series 2 (Series 2 Preferred Shares) at \$25.00 per share. The proposed Series 2 Preferred Shares are convertible, under certain conditions, into an equal number of Series 3 Preferred Shares at the option of the holder.

7. AGP indicated that each of these three issues is independent and that delivery and closing of any one issue does not depend on delivery or closing of the others.

8. AGP indicated that the proposed preferred share issue would help AGP maintain an appropriate capital structure in accordance with Decision 2006-100¹ which approved the continued use of preferred shares by the ATCO Utilities. AGP also submitted that the issuance of the Debentures would help maintain its capital structure at the levels established in the previous Generic Cost of Capital proceeding.² The pro forma capital structures, after giving effect to these issues, were included as Exhibit “D” to the preferred shares issuance Application, and as Exhibits “E” to the Debentures Applications.

9. AGP submitted that the proposed issues:

- would be used to finance capital expenditures, repay existing indebtedness, and for other general corporate purposes; and
- would have no effect on the control of AGP or on the voting power related to the shares of AGP.

2.1 Application No. 1605299 – 6.215% AGP Debenture

10. On March 6, 2009, CU Inc., acting through agents, completed the sale to the public of debentures in the principal amount of \$120,000,000 with a 6.215% yield. All of the proceeds from the sale of these debentures were advanced by CU Inc. to its subsidiaries, AGP and ATCO Electric (AE), subject to *pro rata* sharing of fees and expenses. Accordingly, in Application No. 1605299 AGP proposes to issue a debenture to CU Inc. in the principal amount of \$4,000,000 at a price of \$100.00 to yield 6.215% in respect of the advance of \$4,000,000 made to AGP by CU Inc. (6.215% AGP Debenture).

11. Attached to Application No. 1605299, as Exhibit “F”, is a letter from Bennett Jones LLP which opines that AGP has complied with the appropriate legal requirements for issuing the 6.215% AGP Debenture.

2.2 Application No. 1605230 – 6.50% AGP Debenture

12. On March 6, 2009, CU Inc., acting through agents, completed the sale to the public of debentures in the principal amount of \$150,000,000 with a 6.50% yield. All of the proceeds from the sale of these debentures were advanced by CU Inc. to its subsidiaries, AGP and AE, subject to *pro rata* sharing of fees and expenses. Accordingly, in Application No. 1605230 AGP proposes to issue a debenture to CU Inc. in the principal amount of \$4,000,000 at a price of \$100.00 to yield 6.50% in respect of the advance of \$4,000,000 made to AGP by CU Inc. (6.50% AGP Debenture).

¹ Alberta Energy and Utilities Board Decision 2006-100 – ATCO Utilities 2005-2007 Common Matters Application (Application 1407946) (Released: October 11, 2006)

² Alberta Energy and Utilities Board Decision 2004-052 – Generic Cost of Capital (Application 1271597) (Released: July 2, 2004)

13. Attached to Application No. 1605230, as Exhibit “F”, is a letter from Bennett Jones LLP which opines that AGP has complied with the appropriate legal requirements for issuing the 6.50% AGP Debenture.

2.3 Application No. 1605231 - Cumulative Redeemable Preferred Shares

14. On March 27, 2009, CU Inc., acting through underwriters, completed the sale of 6,400,000 Cumulative Redeemable Preferred Shares Series 2 to the public at \$25.00 per share to yield 6.70%. All of the proceeds from the sale were advanced by CU Inc. to its subsidiaries, AGP and AE, subject to *pro rata* sharing of fees and expenses in connection with this issue. Accordingly, in Application No. 1605231, AGP proposes to issue 1,080,000 Series 2 Preferred Shares to CU Inc. at \$25.00 per share in respect of the advance of \$27,000,000 made to AGP by CU Inc.

15. The rate of dividend payable by AGP on the Series 2 Preferred Shares to be issued to CU Inc. is the same rate payable by CU Inc. on its Cumulative Redeemable Preferred Shares Series 2. On June 1, 2014, and on June 1 in every fifth year thereafter, holders of Series 2 Preferred Shares will have the right to convert their Series 2 Preferred Shares into Series 3 Preferred Shares. The rate of dividend payable on the Series 3 Preferred Shares will be set each quarter at a rate equal to the rate on a three-month Government of Canada treasury bill plus 4.81%.

16. Attached to Application No. 1605231, as Exhibit “E”, is a letter from Bennett Jones LLP which opines that AGP has complied with the appropriate legal requirements for issuing the Series 2 Preferred Shares. Also attached, as Exhibit “C” to Application No. 1605231 is AGP’s submission on the reasonableness of the pricing arrangements made by CU Inc. in connection with the issue of its Cumulative Redeemable Preferred Shares Series 2 on March 27, 2009.

3 ORDER

17. The Commission has reviewed the Applications, and considers that AGP has complied with the requirements of section 101(2)(a) of the *Public Utilities Act*. The Commission is satisfied that the issue of the Preferred Shares and Debentures will be made in accordance with legislative requirements as opined by Bennett Jones LLP in Exhibits “E” and “F” of the preferred share and Debentures Applications, respectively. The Commission is satisfied with the purposes of the issues as stated by AGP in the Applications.

18. The Commission notes that nothing in the Decision will bind, affect or prejudice the Commission’s consideration of any matter relating to AGP’s cost of capital in future proceedings. Specifically, the Commission retains the ability to exercise regulatory scrutiny and to review AGP’s cost of capital with respect to AGP’s outstanding debt or preferred shares during its consideration of AGP’s next general tariff application.

19. IT IS HEREBY ORDERED THAT:

- (1) ATCO Gas and Pipelines Ltd. is authorized to issue a 6.215% debenture to CU Inc. in the principal amount of \$4,000,000 with a maturity date of March 6, 2024.

- (2) ATCO Gas and Pipelines Ltd. is authorized to issue a 6.50% debenture to CU Inc. in the principal amount of \$4,000,000 with a maturity date of March 7, 2039.
- (3) ATCO Gas and Pipelines Ltd. is authorized to issue up to 1,080,000 Cumulative Redeemable Second Preferred Shares Series 2 at \$25.00 per share to CU Inc., convertible to an equal number of Cumulative Redeemable Second Preferred Shares Series 3 at the option of the holder, for total proceeds of up to \$27,000,000.

Dated in Calgary, Alberta on August 14, 2009.

ALBERTA UTILITIES COMMISSION

(original signed by)

Anne Michaud
Acting Commissioner

APPENDIX 1 – PROCEEDING PARTICIPANTS

Name of Organization (Abbreviation) Counsel or Representative (APPLICANTS)
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