



## AltaGas Utilities Inc.

Temporary Exemption from Requirement to  
Obtain Board Approval for Compliance Plan in  
Accordance with Section 30(1) of the  
Gas Code of Conduct Regulation

September 29, 2004

**ALBERTA ENERGY AND UTILITIES BOARD**

Decision 2004-085: AltaGas Utilities Inc.

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In Accordance with Section 30(1) of the Gas Code of Conduct Regulation

Application No. 1359886

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# **ALBERTA ENERGY AND UTILITIES BOARD**

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**Calgary Alberta**

## **ALTAGAS UTILITIES INC. TEMPORARY EXEMPTION FROM REQUIREMENT TO OBTAIN BOARD APPROVAL FOR COMPLIANCE PLAN IN ACCORDANCE WITH SECTION 30(1) OF THE GAS CODE OF CONDUCT REGULATION**

**Decision 2004-085  
Application No. 1359886**

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### **1 INTRODUCTION**

On September 8, 2004, AltaGas Utilities Inc. (AUI) applied to the Alberta Energy and Utilities Board (Board) for an exemption from the requirement to submit a compliance plan to the Board for approval as required by Section 30(1) of the *Gas Utilities Act Code of Conduct Regulation* (the Regulation). The requested exemption was for the period from September 30, 2004 until December 31, 2004 (the Application).

AUI is a gas distributor and default supplier within the meaning of the Gas Utilities Act and is affiliated with AltaGas Ltd. As a default supply provider, AUI is required to prepare and obtain approval of a compliance plan from the Board if it has an affiliated retailer within the meaning of the Regulation.

In a related application, ECNG Limited Partnership (ECNG LP), an Alberta limited partnership, has recently entered into a commercial transaction pursuant to which, among other things, it will be assigned a small number of Alberta wholesale natural gas supply contracts. Following the completion of the commercial transaction, ECNG LP will become an affiliated retailer of AUI within the meaning of the Regulation.

As an affiliated retailer of AUI, ECNG LP must also prepare a compliance plan under the Regulation. ECNG LP has applied for a similar exemption to that in this Application (Application No. 1359872) and the Board has dealt with that application in Decision 2004-084 issued concurrently with this Decision. For purposes of this Decision, the Board considers that the proceeding closed on September 8, 2004.

### **2 DETAILS OF THE APPLICATION**

AUI applied to the Board for an exemption from the requirements of Section 30(1) of the Regulation in order to obtain the necessary time to prepare its compliance plan while ensuring that ECNG LP will be in a position to fulfill its service obligations to Alberta customers without delay. Under the provisions of Section 30(1) of the Regulation, Board approval of the compliance plans for both ECNG LP and AUI has to be in place before ECNG LP can begin to provide retail gas services.

AUI proposed to carry out its obligations in the absence of an approved compliance plan until such time as it could develop one. AUI proposed to develop its compliance plan and submit it to the Board for approval by no later than December 31, 2004. In support of its request to operate in

the absence of an approved compliance plan, AUI advised the Board that none of the delivery points under the natural gas supply contracts that ECNG LP would be servicing are within the service delivery area of AUI. Moreover, AUI undertook to ensure that the business activities and operations of AUI would be kept separate and distinct from those of ECNG LP, except where permitted to share efficiencies under the Regulation. Further, AUI advised that ECNG LP would not be conducting any marketing, retailing or business in the AUI service area.

### 3 VIEWS OF THE BOARD

In arriving at its decision in this Application, the Board is mindful of the timing constraints of ECNG LP given its obligations to serve Alberta customers following completion of the commercial transaction on or about September 30, 2004.

Given the above, the Board has considered the following factors in arriving at its decision:

- (1) the limited period for which the exemption is being requested, including the commitment to develop and submit a compliance plan for approval by the Board;
- (2) the assurance of AUI that none of the delivery points under the natural gas supply contracts that ECNG LP is assuming are in the service delivery of AUI; and
- (3) the undertaking of AUI to ensure that the business activities and operations of AUI will be kept separate and distinct from ECNG LP except where permitted to share efficiencies under the Regulation.

Section 41(1)(a) of the *Gas Code of Conduct Regulation* permits a gas distributor or default supply provider or their affiliated retailer to apply to the Board for an exemption from all or any provision of the Regulation. Section 41(2) authorizes the Board to approve an exemption provided that it is in the public interest to do so and that any exemption does not significantly affect the obligations of the applicant or that the obligations can be met in other ways. Section 41(3) further authorizes the Board to impose conditions on any exemption that the Board may grant.

As required by Section 41 of the Regulation, the exemption is not intended to relax any compliance requirements or obligations in the Regulation. Nonetheless, the Board considers that it would be in the public interest to grant an exemption to AUI from the requirements of Section 30(1) of the Regulation to enable ECNG LP to fulfill its service obligations without delay. While the Applicant has requested that the Board permit it to have until December 31, 2004 to develop and file its compliance plan for approval with the Board, the Board is of the view that 2 months is a sufficient period of time in this respect. The Board considers that it would be in the public interest to attach some conditions to its approval.

The conditions placed upon the approval are as follows:

1. The Board requires the applicant to develop and submit its compliance plan to the Board no later than December 1, 2004.

2. The approval for an exemption takes effect on the date ECNG LP commences to operate the natural gas supply contracts contemplated in the commercial transaction that gives rise to the need for a compliance plan to be approved by the Board and remains in effect until AUI's compliance plan has been approved by the Board (the Exemption Period).
3. AUI shall ensure that during the Exemption Period its business activities and operations will continue to be kept separate and distinct from those of ECNG LP, except where permitted to share efficiencies under the Regulation.
4. The approval does not restrict the rights of the Board to pursue its mandate under the Regulation.
5. AUI must acknowledge the conditions relating to this Decision and confirm that they will be met, by letter delivered to the Board not later than September 30, 2004, signed by an officer or director of AUI. The letter should also provide the name and contact information for the person in AUI responsible for compliance with the Regulation and the temporary exemption, and to whom any enquiries in this regard should be addressed. The letter should be addressed to the attention of Richard McCabe, Head, Audit and Compliance Group, Utilities Branch.
6. Any compliance reporting required pursuant to the Regulation, including without limitation, audits pursuant to Section 39, must take into account the Exemption Period. Specifically, the audit must not only test for compliance with the Regulation during this time, but also for compliance with the conditions of this Decision.
7. AUI must provide to the Board a monthly compliance report for each calendar month (or part thereof) during the Exemption Period. Each monthly report must be signed by an officer or director, on behalf of AUI, and filed with the Board (attention: Richard McCabe, Head, Audit and Compliance Group, Utilities Branch) not later than the 15<sup>th</sup> day of the following month. The monthly compliance report must contain the following:
  - (a) a detailed description as to any non-compliance with the Regulation or the conditions of this exemption;
  - (b) action taken to deal with the non-compliance; and
  - (c) a detailed description of any complaints of non-compliance with the Regulation and how the complaints have been dealt with.

#### **4 ORDER**

##### **IT IS HEREBY ORDERED THAT:**

A conditional time exemption from the requirements of Section 30(1) of the Regulation is granted for the purposes of permitting AUI to carry out its obligations in the absence of a Board approved compliance plan and to permit ECNG LP to fulfill its obligations without delay, all as described in the Application and approved by this Decision. Such exemption shall remain in effect for the Exemption Period.

Dated in Calgary, Alberta on September 29, 2004.

##### **ALBERTA ENERGY AND UTILITIES BOARD**

*(original signed by)*

B. T. McManus, Q.C.  
Chair

*(original signed by)*

J. I. Douglas, FCA  
Member

*(original signed by)*

T. McGee  
Member