

THE PROVINCE OF ALBERTA

GAS UTILITIES ACT

ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER of an issue of a
6.145 per cent Debenture for ATCO
Gas and Pipelines Ltd.

ORDER U2003-074

Application No. 1287199
File No. 6508-4

1 BACKGROUND

By letter dated December 11, 2002, CU Inc. filed three applications regarding the issuance of debentures on behalf of ATCO Gas and Pipelines Ltd. (AGP), ATCO Electric Ltd. (AE), and CU Water Limited (CU Water) with the Alberta Energy and Utilities Board (the Board). The application from AGP (Application) requested authorization to issue a 6.145 % Debenture (the 6.145% Debenture or Debenture) in the principal amount of \$64,000,000 to its parent company, CU Inc.

The Application was considered pursuant to section 26(2)(a) of the *Gas Utilities Act*, R.S.A. 2000, c.G-5, as amended, (GU Act) which provides:

26(2) No owner of a gas 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 Board that the proposed issue is to be made in accordance with law and has obtained the approval of the Board for the purposes of the issue and an order of the Board authorizing the issue, ...

The Board arranged for publication of Notice of Applications, and provided interested parties a copy of the Notice of Applications by email on January 7, 2003. Interested parties were requested to file any objections to the Application by January 27, 2003. By letter dated January 27, 2003, the City of Calgary (Calgary) objected to the Application.

In a letter dated January 29, 2003, the Board requested that AGP respond to Calgary's objections by February 5, 2003. Subsequent to AGP's response, the Board issued a letter dated February 12, 2003, with its views regarding the concerns raised by Calgary. The Board requested that AGP file additional information with respect to the reasonableness of pricing arrangements contained in Appendix D of the Application by February 17, 2003.

March 18, 2003

AGP filed the requested information on February 17, 2003; the Board considers that for purposes of this Application, the record closed as of this date.

2 DETAILS OF THE APPLICATION

On November 22, 2002, CU Inc., parent company of AGP, completed the sale of a 6.145 % debenture in the principal amount of \$150,000,000 to the public. CU Inc. advanced \$64,000,000 of the proceeds from this sale to AGP. This advance was made on the understanding that AGP would incur a pro rata share of the issue fees and expenses of CU Inc. Accordingly, AGP proposes to issue a 6.145% Debenture in the principal amount of \$64,000,000 to CU Inc. in respect of the advance received.

The proposed 6.145% Debenture will mature on November 22, 2017. The Debenture contains repayment and redemption provisions and other terms and conditions that reflect the comparable provisions applicable to the 6.145% debenture of CU Inc. AGP stated in the Application:

The rate of interest payable by [AGP] on the 6.145% Debenture to be issued to CU Inc. is the rate payable by CU Inc. on its 6.145% Debentures. This rate of interest and other terms and conditions attaching to the 6.145% Debenture are, in the opinion of the management of [AGP], more favourable to [AGP] than would have been the case if [AGP] had carried out long-term debt financing on its own. Accordingly, the proposed issue of the 6.145% Debenture to CU Inc. will not be prejudicial to the interests of the customers of [AGP] nor to the interest of the public of the Province of Alberta.

The net proceeds to AGP, after deduction of its pro rata share of the issue fees and expenses of CU Inc., are estimated to be approximately \$63,622,000. Of these net proceeds \$53,681,000 will be allocated to the ATCO Gas division and \$9,941,000 will be allocated to the ATCO Pipelines division and will be applied to repay outstanding indebtedness, finance capital expenditures, and for other general purposes. AGP indicated that the proposed Debenture would help the company maintain an appropriate capital structure.

3 VIEWS OF THE BOARD REGARDING CALGARY'S OBJECTION

Calgary cited the following reasons for objecting to the Application:

- an inconsistency in information supplied on proximate dates with respect to the amount, interest rate and intended term of financing issues in the various applications before the Board
- longer term and higher priced debentures were being used to finance regulated entities, while shorter term and lower priced debentures were being used to finance unregulated entities
- information provided with respect to the reasonableness of the pricing arrangements in Appendix D of the Application was limited or non-comparable

With respect to the inconsistency in information supplied in the Application compared to the information contained in the various applications before the Board, the Board considers that parties submitting information to the Board should use the most current and up-to-date information available. It is not clear to the Board as to why more up-to-date information with respect to debentures was not filed in the AGP general rate application (GRA); however, the Board considers that this matter is best dealt with in the context of a GRA proceeding.

The Board notes Calgary's concern that longer term and higher priced debentures were being used to finance regulated entities, while shorter term and lower priced debentures were being used to finance unregulated entities. The Board considers that debt is only one factor in the determination of a prudent capital structure. In the past, the Board has deemed equity levels and rates on debentures for ratemaking purposes that were different from the actual levels the utility forecast or reported.

Further, the Board notes that in the context of a GRA, finance experts were normally available to fully examine these matters and other matters with better access to the complete picture of the utility's capitalization. Accordingly, the Board considers that addressing these matters in the context of a GRA is efficient and minimizes hearing costs, as a separate proceeding would not be required to deal with these matters as part of each financing application.

The Board agrees with Calgary's third concern that the information provided with respect to the reasonableness of the pricing arrangements in Appendix D of the Application was limited or non-comparable. The Board notes that in previous debenture applications information regarding date of issue, amount of issue, issue spread, and type were provided. Consequently the Board directed AE to file this additional information by February 17, 2003.

Having reviewed this material, it appears to the Board that the issue has intrinsic value and does not represent obviously excessive or unreasonable expenditures. Therefore, based on the foregoing, the Board considers that it is appropriate to continue to process this Application without further delay as stated in the Notice of Applications.

4 ORDER

On the basis of review of the documentation provided in the Application, the Board considers that AGP has complied with the requirements of section 26(2)(a) of the GU Act and is satisfied that the issue of the 6.145% Debenture will be made in accordance with legislative requirements. The Board is satisfied with the purposes of the issue and is satisfied that the Debenture will not be detrimental to the interests of AGP' customers. Therefore, the Board hereby authorizes AGP to issue the 6.145% Debenture, in the principal amount of \$64,000,000 to CU Inc.

DATED in Edmonton, Alberta on March 18, 2003.

(original signed B. Torrance)

ALBERTA ENERGY AND UTILITIES BOARD

March 18, 2003