

THE PROVINCE OF ALBERTA

GAS UTILITIES ACT

ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER of an issue of
Class A non-voting and Class B
common shares for ATCO Gas and
Pipelines Ltd.

ORDER U2002-128

Application No. 1256462
File No. 6503-25

1 BACKGROUND

By letter dated January 29, 2002, CU Inc. filed an application (the Application) with the Alberta Energy and Utilities Board (the Board) on behalf of ATCO Gas and Pipelines Ltd. (the Corporation) for authorization to issue 17,518 Class A non-voting and 10,607 Class B common shares to CU Inc., the Corporation's parent company. The Corporation proposed a sale price of \$160 per share, for aggregate proceeds of \$4,500,000.

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, ...

Notice of the Application was published and served on interested parties by the Board on February 12, 2002. Interested parties were requested to file any objections to the Application by March 15, 2002. No objections were received to the published notice; therefore, the Board will proceed to process this Application as indicated.

March 21, 2002

2 DETAILS OF THE APPLICATION

On December 12, 2001, the Board issued Decision 2001-97 relating to the ATCO Pipelines South (a division of the Corporation) General Rate Application for the 2001 and 2002 test years. In the Decision, the Board granted among other things, a return on common equity with a common equity ratio of 45.5%.

The Corporation proposed to issue the shares to increase the common equity ratio of ATCO Pipelines South as allowed by the Board in Decision 2001-97. In the Application, the Corporation provided the following Pro Forma capital structure for ATCO Pipelines South, demonstrating the effect on capital structure after issuing the proposed common shares.

ATCO Pipelines South Pro Forma Capital Structure

	Forecast		Forecast	
	<u>December 31, 2001</u>		December 31, 2001	
	<u>Amount</u>	<u>%</u>	<u>As Adjusted¹</u>	
	(\$ millions)		(\$ millions)	<u>%</u>
Long Term Debt	67.8	49.7	67.8	48.1
Preferred Shares	9.0	6.6	9.0	6.4
Common Equity	59.5	43.7	64.0	45.5
Total Capital	136.3	100.0	140.8	100.0

The Corporation also provided the manner in which the price per share was determined for the proposed issue. An approximate ratio of price to book value for CU Inc. was applied to the book value per share for the Corporation to determine the share price as noted below:

	<u>CU Inc.</u>	<u>Corporation</u>
Common Shareholders Equity ²	\$1,601,100,000	\$573,172,000
Number of Equity Shares Outstanding ^{2,3}	63,317,035	6,708,823
Book Value Per Share	\$25.29	\$85.44
Price Per Share	\$49.94 ⁴	\$160.00
Approximate Ratio of Price to Book Value	2.0	2.0

Legal counsel for the Corporation provided an opinion regarding the issue of securities as contemplated in the Application. Having examined copies of the articles and by-laws of the Corporation, a certified copy of a resolution of the directors of the Corporation authorizing the issuance of the shares, and other documents as considered necessary, legal counsel for the

¹ After giving effect to the issue of the shares.

² As at September 30, 2001

³ Aggregate number of Class A non-voting and Class B common shares outstanding before giving effect to this issue.

⁴ Closing market price of Canadian Utilities Limited Class A non-voting shares on January 14, 2002.

Corporation was of the opinion that the shares would be validly issued and exempt from the registration and prospectus requirements of the *Securities Act* by virtue of sections 86(1)(e) and 131(1)(d).

3 ORDER

On the basis of review of the documentation provided in the Application, the Board considers that ATCO Gas and Pipelines Ltd. has complied with the requirements of section 26(2)(a) of the GU Act, and is satisfied that the issue of common shares will be made in accordance with legislative requirements. The Board is satisfied that the issuance of shares will result in an appropriate capital structure as approved by the Board in Decision 2001-97. Therefore, the Board hereby authorizes ATCO Gas and Pipelines Ltd. to issue 17,518 Class A non-voting and 10,607 Class B common shares to CU Inc., at a price of \$160 per share, for aggregate proceeds of \$4,500,000.

DATED in Edmonton, Alberta on March 21, 2002.

ALBERTA ENERGY AND UTILITIES BOARD