



AltaGas Utility Group Inc.

Application for the Sale and Transfer of Capital Stock

January 30, 2018

Alberta Utilities Commission

Decision 23010-D01-2018

AltaGas Utilities Group Inc.

Application for the Sale and Transfer of Capital Stock
Proceeding 23010

January 30, 2018

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1 Introduction

1. On October 6, 2017, AltaGas Utility Group Inc. (AltaGas Group) applied to the Alberta Utilities Commission for an order or orders made pursuant to Part 2 of the *Gas Utilities Act* and in particular Section 27 of the *Gas Utilities Act*, and Part 3 of the *Alberta Utilities Commission Act*, approving and authorizing AltaGas Group to sell and transfer, and to make on its books a transfer of, all of its outstanding shares or capital stock from its current shareholder, AltaGas Ltd., to its affiliate AltaGas Utility Holdings (Pacific) Inc. (AltaGas Pacific). In this decision, the Commission will refer to this transfer as the share transaction.

2. Section 27 of the *Gas Utilities Act* stipulates that the Commission must authorize the sale or transfer of the shares of AltaGas Group, a designated owner of a utility under Section 26(1) of the act, when any such sale or transfer, by itself or in connection with previous sales or transfers, would result in the vesting in a corporation of more than 50 per cent of AltaGas Group's outstanding shares.

3. On October 11, 2017, the Commission issued a notice of application that required any interested party to submit a statement of intent to participate (SIP) by October 23, 2017. The Commission did not receive any SIPs.

4. Upon review of the application, the Commission determined that it needed further information before coming to a determination and subsequently issued three rounds of information requests (IRs). The Commission considers the record closed with the responses to the third round of IRs on January 16, 2018.

5. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record of this proceeding. References in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to this proceeding.

2 Background

6. AltaGas Utilities Inc. (AltaGas Utilities) owns and operates natural gas utility facilities that distribute natural gas directly to customers in various parts of Alberta. AltaGas Utilities is directly and wholly owned by AltaGas Utility Holdings Inc. (AltaGas Holdings). AltaGas Holdings in turn is directly and wholly owned by AltaGas Group. All of AltaGas Group's outstanding shares are directly owned by AltaGas Ltd.

7. AltaGas Group and AltaGas Holdings, as the indirect and direct owners of AltaGas Utilities, respectively, are each designated as an owner of a gas utility pursuant to Section 26(1) of the *Gas Utilities Act* and as an owner of a public utility pursuant to Section 109 of the *Public Utilities Act*. AltaGas Utilities, as the owner of and operator of natural gas utility facilities that distribute natural gas within Alberta, is also designated as an owner of a gas utility pursuant to Section 26(1) of the *Gas Utilities Act* and as an owner of a public utility pursuant to Section 109 of the *Public Utilities Act*.

8. AltaGas Pacific is a holding company that currently owns all of the outstanding shares of Pacific Northern Gas Ltd. (Pacific Northern). Pacific Northern owns and operates natural gas utility facilities that transport and distribute natural gas directly to customers in various communities within British Columbia. AltaGas Pacific is wholly owned by AltaGas Ltd.

9. The current corporate structure of AltaGas Ltd., which is the ultimate parent of AltaGas Utilities, is shown in a flow chart in Appendix A to the application,¹ reproduced in [Appendix 2](#) to this decision. The flow chart also shows the current ownership structure of AltaGas Pacific, AltaGas Group, AltaGas Holdings and AltaGas Utilities, and where each entity is located within the corporate structure of AltaGas Ltd.

3 Details of the share transaction

10. After the share transaction, AltaGas Ltd. will receive shares of AltaGas Pacific in exchange for all of the outstanding shares of AltaGas Group. Thereafter, AltaGas Pacific will directly and wholly own AltaGas Group. The ownership structure after the share transaction is depicted in flow chart Revised Appendix B to the application,² and was reproduced in [Appendix 3](#) to this decision.

11. AltaGas Group stated that the share transaction is a part of a wider internal reorganization undertaken by AltaGas Ltd. intended to realign certain of its affiliates and business, and operational lines. Following the share transaction, AltaGas Pacific will be an energy infrastructure holding company with investments in utility assets and non-utility energy infrastructure assets. The reorganization will align all of AltaGas Ltd.'s Canadian utility entities under a common parent holding company, AltaGas Pacific. It will also provide future opportunities to AltaGas Pacific, as an energy infrastructure company, to access debt and equity markets directly to obtain financing for operations.³

12. AltaGas Ltd. is also in the process of acquiring WGL Holdings, Inc. (WGL Holdings), a publicly traded energy infrastructure company listed on the New York Stock Exchange, subject to obtaining applicable shareholder and United States regulatory approvals. As part of the financing steps for the purchase of WGL Holdings, a portion of AltaGas Pacific's shares may be sold to the public.⁴

13. AltaGas Group explained that after the share transaction and reorganization, AltaGas Pacific will be responsible for obtaining debt to be used by it and its subsidiaries and affiliates

¹ Exhibit 23010-X0003.

² Exhibit 23010-X0015.

³ Exhibit 23010-X0016, AUGI-AUC-2017NOV09-001(c).

⁴ Exhibit 23010-X0016, response to AUGI-AUC-2017NOV09-001(a).

instead of AltaGas Ltd. In response to the Commission's query on the credit rating of AltaGas Pacific, AltaGas Group submitted the following:

AUHPI [AltaGas Utility Holdings (Pacific) Inc.] is not yet rated by a debt rating agency. However, AltaGas is consulting with financial advisors and AltaGas management expects that AUHPI will obtain an investment grade credit rating from DBRS in early 2018 following the Share Transaction and Reorganization.⁵

4 The no-harm to customers test

14. The Commission has historically applied the no-harm test to customers in determining whether it will approve internal corporate reorganizations and asset dispositions, as well as external transactions which result in a change of ownership of an operating utility company.⁶ The evolution of the test was articulated in Decision 2014-326,⁷ where the Commission approved the sale of AltaLink's operating utility company, AltaLink Management Ltd. to Berkshire Hathaway through a series of complex share transactions among limited companies and limited partnerships.

15. In summary, in Decision 2014-326, the Commission examined the following factors in determining whether customers would be harmed if the AltaLink transaction, discussed in the prior paragraph was approved:

- The impact to the rates and charges passed on to customers,
- The operational benefit or risk related to the acquiring party's utility experience, which encompasses the following considerations:
 - impact on financial profile of the utility for purposes of attracting capital
 - sufficient, continuing Commission oversight of the utility
 - continuing management and operational expertise post transaction
 - impact on customer costs related to tax, pension funds or other matters
 - desire of the acquiring party to operate a utility business in Alberta when compared to divesting party.

16. The Commission also stated that the test involves the following additional considerations:

- Protection of customers to the maximum extent.
- Customers are not entitled to a level of post-transaction regulatory certainty they would not have realized if the transaction had not been approved.
- After consideration of the potential positive and negative impacts of the proposed share transactions, customers are at least no worse off after the transaction is completed.⁸

⁵ Exhibit 23010-X0016, response to AUGI-AUC-2017NOV09-002(c).

⁶ EUB Decision 2005-112: AltaGas Utility Holdings Inc., Request for Approval of Share Transfer, Application 1408750-1, October 14, 2005, pages3-4;

⁷ Decision 2014-326: AltaLink Investment Management Ltd. and SNC Lavalin Transmission Ltd. et al. Proposed Sale of AltaLink, L.P. Transmission Assets and Business to MidAmerican (Alberta) Canada Holdings Corporation, Proceeding 3250, Applications 1610595-1, 1610596-1 and 1610597-1, November 28, 2014, paragraphs 108 and 110.

⁸ Decision 2014-326, paragraphs 109 and 110.

17. As such, there are two stages to the no-harm test: in the first stage, the Commission must consider whether the transaction will result in harm to customers, which is determined by an assessment of the factors and considerations highlighted above and if so, in the second stage, the Commission must consider whether the harm can be mitigated through approval conditions.

18. Based on the above, the Commission has considered three basic factors in assessing whether there is harm to customers as a result of the share transaction: operational impacts on continued reliable service to customers, financial impacts to customer rates, and sufficient regulatory oversight of the operating utility after the transaction has been completed. The following sections 4.1 and 4.2 will consider the operational impacts on continued reliable service to customers and financial impacts to customer rates. The last factor, regulatory oversight after completion of the transaction, will be dealt with under Section 4.3, dealing with the designation of AltaGas Pacific under the *Gas Utilities Act* and *Public Utilities Act*.

4.1. Operational impacts on continued reliable service

19. AltaGas Group submitted that because the share transaction is part of an internal reorganization involving holding companies and is not a sale of AltaGas Group, AltaGas Holdings or AltaGas Utilities to an external owner, there will be no change or adverse effect on the management and operations of AltaGas Utilities. It maintained that the provision of reliable gas distribution service to customers will continue unabated. AltaGas Group further stated that AltaGas Utilities will continue to have the same access to the current level of management and operational expertise supplied through inter-affiliate services.⁹

20. The Commission accepts the submissions and assurances made by AltaGas Group. AltaGas Utilities will continue to own, manage and operate its natural gas utility facilities and will continue to be directly responsible for the day-to-day operations of the gas utility in the same manner as it did prior to the share transaction. Further, AltaGas Group also stated that it, along with AltaGas and AltaGas Pacific, is committed to investing in regulated utilities.¹⁰

21. The Commission accepts this representation that these holding companies remain committed to the financial health of the operating utility, ensuring that a supply of funds sufficient for growth and capital maintenance are sustained.

22. In summary, the Commission finds that approval of the proposed share transfer and restructuring will not have a negative impact on the management and operation of AltaGas Utilities, and that the current reliability of the service provided and integrity of the gas distribution system will most likely be unaffected.

4.2 Financial impacts on customer rates

23. The Commission finds that there may be impacts to customer rates as a result of the share transaction arising from three areas:

- New or existing inter-affiliate relationships in the AltaGas corporate family
- Tax implications
- The impact on the debt costs that are borne by AltaGas Utilities' customers.

⁹ Exhibit 23010-X0002, application, paragraphs 40-42.

¹⁰ Exhibit 23010-X0002, application, paragraph 40.

24. AltaGas Group confirmed that inter-affiliate relationships will remain unchanged and subject to AltaGas Utilities' Code of Conduct.¹¹ In the event that amendments are required to either the AltaGas Utilities Inter-affiliate Code of Conduct or its compliance plan under the Code of Conduct Regulation, AltaGas Utilities undertook to file the amendments with the Commission.¹²

25. The Commission accepts that amendments to the Inter-affiliate Code of Conduct and compliance plan which will be filed with the Commission, if necessary, will provide a mechanism to prevent abuses sometimes associated with inter affiliate transactions in the event that the share transfer creates such situations. Any potential harm to customers can be mitigated by the Commission-approved amendments.

26. The Commission inquired about any tax implications arising from the share transaction, to which AltaGas Group responded:

(a) For tax purposes, any taxable capital gain that may arise on the share transaction may be deferred in accordance with section 85 of the Canadian *Income Tax Act*...

(b) The tax deferral noted in part (a) of this response would end at a date when AltaGas Ltd. sells the shares of AUHPI or capital is returned to AltaGas Ltd. on the AUHPI shares that exceeds their tax cost. Any tax obligations associated with such transactions would be applicable to AltaGas Ltd. AUGI confirms that none of those obligations would be borne by AUI or its customers.¹³

27. The Commission accepts this answer that customers will not be liable for any tax impacts associated with the share transfer and thus will not have suffered any associated harm.

28. There are two considerations with respect to debt in this application, which are the current and future cost of outstanding debt. With regard to its current cost of debt, AltaGas Group points out that all the current outstanding long-term debt of AltaGas Group held by AltaGas Ltd. will be assigned to AltaGas Pacific. AltaGas Group provided assurance that the terms of the debt will not change or be impacted by the reorganization.¹⁴ Given these circumstances, the Commission finds that customers will not be harmed with respect to the costs of current outstanding long-term debt of AltaGas Group or AltaGas Utilities.

29. However, the Commission is concerned about the effect of the proposed share transaction on the future cost of debt. As noted earlier in Section 3 of the decision, following the restructuring, AltaGas Pacific will be issuing debt to the market, which will be mirrored down to AltaGas Utilities. Prior to the restructuring, AltaGas Ltd. issued debt to the market, which was mirrored down to AltaGas Utilities at a cost reflective of its investment grade credit rating.¹⁵ Because AltaGas Pacific currently has not secured an investment grade credit rating from Dominion Bond Rating Service (DBRS), its cost of debt is uncertain. This unresolved status could result in a credit rating where AltaGas Utilities pays higher interest rates than previously achieved resulting in harm to customers. Such a scenario would arise, if AltaGas Pacific's credit

¹¹ AltaGas Utilities Inc. Inter-Affiliate Code of Conduct, approved by the Commissions' predecessor, the Alberta Energy and Utilities Board, on January 5, 2005.

¹² Exhibit 23010-X0002, application, paragraph 27.

¹³ Exhibit 23010-X0022, response AUGI-AUC-2017DEC11-002.

¹⁴ Exhibit 23010-X0002, application, paragraph 44.

¹⁵ AltaGas Group submitted that AltaGas Ltd., at the time of the submission of IR responses had a BBB Under Review from DBRS Exhibit 23010-X0016, AUGI-AUC-2017NOV09-002.

rating is less than the BBB investment grade rating, resulting in a cost of debt that would be higher than the cost of debt raised by AltaGas Ltd., and be detrimental to AltaGas Utilities' customers. Mirroring down the cost of debt from AltaGas Pacific would then result in harm to customers.

30. The Commission in an IR inquired about AltaGas Group's views of the remedies that would be available to mitigate the financial impact to AltaGas Utilities and its customers in the event that AltaGas Pacific is unable to obtain the investment grade credit rating. AltaGas Group responded:

In the event that AUHPI does not obtain an investment grade credit rating after the Share Transaction and Reorganization, AUGI confirms that for any new debt issued by AUI to AUGI for five years following the Share Transaction (2018 through to the end of 2022) AUGI will only seek to recover from AUI, through AUI's rates, an interest expense that is based on the interest rate available at the time for investment grade (DBRS, BBB (low)) rated debt. At the conclusion of the five year period, AUGI confirms that AUI's cost of debt to be recovered in rates will not exceed what AUI could otherwise obtain in debt markets as a standalone entity.¹⁶

31. AltaGas Group later provided the clarification that AltaGas Ltd. currently has a credit rating of BBB with the note of "Under Review with Developing Implications" due to the purchase of WGL Holdings and, as such, the proposed floor of BBB(low) is one notch down from its current debt rating.¹⁷

32. As a further consideration related to AltaGas Utilities' cost of debt, in the 2016 Generic Cost of Capital (GCOC) Decision 20622-D01-2016,¹⁸ the Commission determined the return on equity (ROE) and deemed equity thickness of the distribution and transmission operating utilities. These items determine in part the utilities' costs that are passed on to customers' rates. In that decision, the Commission made the following findings:

385. ... the Commission will, consistent with its approach in past GCOC decisions, award common equity ratios that are, on a stand-alone basis, consistent with credit ratings in the A category.

...

619. ... the Commission has determined, subject to company specific adjustments, that a deemed equity ratio of 37 per cent for both distribution and transmission utilities, including those which pay tax and those which currently do not pay tax, satisfies the fair return standard required when combined with an 8.3 per cent allowed ROE [return on equity] for 2016, and an 8.5 per cent allowed ROE for 2017, and will enable the affected utilities to maintain a credit rating in the A category.

...

621. The Commission found that a 400 bps [basis points] company specific upward adjustment to the 37 per cent deemed equity ratio for the average distribution utility was warranted for AltaGas....

¹⁶ Exhibit 23010-X0022, response to AUGI-AUC-2017DEC11-001.

¹⁷ Exhibit 23010-X0028, response to AUGI-AUC-2018JAN09-002.

¹⁸ Decision 20622-D01-2016, 2016 Generic Cost of Capital, Proceeding 20622, October 7, 2016.

33. The Commission in an IR raised the issue of an apparent disconnect between the equity thickness the Commission awarded AltaGas Utilities based on a credit rating of A category in the GCOC decisions and the cost of debt that is flowed to its customers based on an investment grade credit rating of BBB of AltaGas Ltd.¹⁹ AltaGas Group, in its response stated:

AUI's current rates reflect the interest rates on the debt that was present during the 2012 test year as adjusted in compliance filing, and further adjusted for the effects of the PBR formula and capital tracker proceedings during the years 2013-2017.

...

It is important to note, that the 2016 GCOC Decision did not direct AUI, or any Alberta utility, to modify its interest expense from those approved within the first generation PBR Decision 2012-237. AUI customers are paying rates that are fully reflective of past Commission decisions – including equity ratio and ROE as determined by the Commission in its GCOC proceedings and debt rates tested separately by the Commission for prudence. [original emphasis].²⁰

34. AltaGas expressed its view that any relationship between a utility's actual credit rating and the resulting cost of debt on one hand, and the findings in the Commission's GCOC decisions regarding the allowed ROE and equity thickness awarded to the utility based on an A category credit rating on the other hand, requires a wider forum.²¹ The Commission agrees and considers the 2018 GCOC proceeding to be the correct forum to address this issue.²²

35. In order to protect the customers from any potential detrimental effect of a credit rating assigned to AltaGas Pacific that is lower than the current BBB rating of AltaGas Ltd., the Commission generally accepts the mitigating strategy offered by AltaGas Group for any new debt issued by AltaGas Utility subject to certain adjustments. Specifically, subject to the Commission determinations in the 2018 GCOC decision on the issue addressed in the previous paragraphs, for any new debt issued by AltaGas Utilities, the Commission is only prepared to approve in the AltaGas Utilities' rates an interest expense that is based on the credit rating no lower than DBRS BBB, i.e., the current credit rating of AltaGas Ltd. The Commission finds that accepting AltaGas Group's mitigation strategy with the aforementioned adjustment would enable the Commission to ensure that customers will be at least no worse off after the transaction is completed with regards to the future cost of debt. This mitigation strategy might not necessarily result in AltaGas Pacific "mirroring down" the debt costs to AltaGas Utilities.

36. AltaGas Group's mitigating strategy will be implemented to address any future debt costs and any deemed equity adjustments from the upcoming GCOC determination as part of the following condition offered by AltaGas Group for approval of the application, which the Commission accepts.

(ii) AUGI shall cause AUI to address in AUI's next rate application any changes to AUI's costs, service levels, contractual obligations, affiliate or share service agreements

¹⁹ Exhibit 23010-X0028, response to AUGI-AUC-2018-JAN09-001.

²⁰ Exhibit 23010-X0028, response to AUGI-AUC-2018-JAN09-001 a (i).

²¹ Exhibit 23010-X0028, response to AUGI-AUC-2018-JAN09-001(b).

²² The Commission has initiated steps for transferring the issue by the following letters: Exhibit 23010-X0029, AUC letter - Transfer of issue to 2018 generic cost of capital proceeding and close of record; Proceeding 22570, Exhibit 22570-X0616, Request for comments on the possible expansion of the scope of the proceeding and proposed amendments to the process schedule.

or arrangements, changes in risk profile or capital structure, debt financing costs or provisions, or any other areas that may give rise to potential harm to AUI customers as a direct or indirect result of the Share Transaction; ...²³

37. Based on the above, the Commission finds that after consideration of the potential positive and negative impacts of the proposed share transaction, customers will be at least no worse off after the transaction is completed with regard to the future cost of debt.

38. In summary, after having considered new or existing inter-affiliate relationships in the AltaGas corporate family, tax implications and current and potential impact on the debt costs that are borne by AltaGas Utilities' customers, the Commission finds that customers will not be harmed financially as a result of the share transaction.

4.3 Designation of the AltaGas Pacific under the Gas Utilities Act and Public Utilities Act

39. Sections 26 and 27 of the *Gas Utilities Act* require that the designated owners of gas utilities obtain the approval of the Commission prior to issuing debt or equity (or consummating a number of other transactions) or the transactions are void. Section 109 of the *Public Utilities Act* applies to both owners of gas and electric utilities and states that a union between designated owners of public utilities (or a designated owner and an undesignated owner) has no effect unless it is approved by the Commission.²⁴ Under both Acts, the Lieutenant Governor in Council may make the designation by regulation. When the Commission finds that a new designation is necessary or an existing designation is unnecessary, it makes a recommendation to the Lieutenant Governor in Council to either add or remove a company from the *Gas Utilities Designation Regulation* or the *Public Utilities Designation Regulation*.

40. Currently, AltaGas Utilities, and the two holding companies, AltaGas Holdings and AltaGas Group are each designated owners for the purposes of sections 26 and 27 of the *Gas Utilities Act* and Section 109 of the *Public Utilities Act*. The ultimate parent or holding company, AltaGas Ltd., is not a designated owner under either of the two acts.

41. In its application, AltaGas Group submitted that the current designations under the two statutes should remain unchanged notwithstanding that the proposed restructuring would result in the interposition of AltaGas Pacific between AltaGas Ltd. and AltaGas Group in the corporate chain of subsidiary companies flowing from AltaGas Ltd. ultimately to AltaGas Utilities, the operating utility. AltaGas Pacific would become the immediate or direct owner of 100 per cent of AltaGas Group's shares replacing AltaGas Ltd.'s shareholding interest. AltaGas Group would continue to own 100 per cent of the shares of AltaGas Holdings, which in turn would continue to own 100 per cent of the shares of AltaGas Utilities. AltaGas argued that this proposal would leave intact the Commission's authority over AltaGas Utilities and its two immediate parent holding companies, AltaGas Holdings and AltaGas Group. AltaGas Pacific would take the place of AltaGas Ltd., which is not designated under either the *Public Utilities Act* or the *Gas Utilities Act*.

42. AltaGas Group stated that given the nature of AltaGas Pacific as a diversified energy infrastructure company with multi-jurisdictional holdings, a large number of which will be unregulated or subject to regulation outside of Alberta, it must have timely and unhindered

²³ Exhibit 23010-X0022, response to AUGI-AUC-2017DEC11-001.

²⁴ See Appendix 4 to this decision for relevant sections.

access to public debt and equity markets. This efficient access will be hampered if AltaGas Pacific must obtain the Commission's approval for its financing requirements as well as other commercial transactions with its non-utility energy assets in Alberta or elsewhere or its regulated utility assets in other provinces. AltaGas Group also asserted that the proposed restructuring will permit AltaGas Pacific to align its varied assets along business, operational and jurisdictional lines.²⁵

43. The Commission's general practice has been to designate "both the utility itself (as the utility operator or owner of the utility assets) and the direct owner, or parent of the utility"²⁶ in order to ensure that there is sufficient oversight for the protection of the integrity of the utility system and customers from negative impacts that might result from a company's financial and share issuance activities described in sections 26 and 27 of the *Gas Utilities Act* and Section 109 of the *Public Utilities Act*. This means that the corporate entity that legally owns, manages and operates the utility assets (i.e., pipelines, compressor stations, buildings vehicle fleet), as well as the shareholder which controls the operating business through the election of directors, often a holding company or companies, have been designated owners of utilities.²⁷

44. The designations of AltaGas Utilities, AltaGas Holdings and AltaGas Group but not AltaGas Ltd., illustrate the point that the Commission has not always restricted the designation to the operating company and its direct parent. It was in EUB Decision 2005-112,²⁸ a decision in which an earlier AltaGas corporate reorganization was considered, that the Commission designated AltaGas Group (then called Newco), in circumstances where AltaGas Group indirectly acquired ownership of AltaGas Utilities through its acquisition of all the AltaGas Holdings shares.²⁹

45. A significant change resulting from the proposed reorganization of the AltaGas corporate family is that AltaGas Pacific will raise the debt required by the operating utility, AltaGas Utilities, instead of AltaGas Ltd. (the ultimate, indirect owner of all the AltaGas utility assets in Alberta and elsewhere in North America). As discussed in Section 4.2, AltaGas Pacific does not yet have a credit rating and has not yet accessed financial markets to finance the utility operations of AltaGas Utilities. Nor has it issued shares to the public although it intends to.³⁰ In these circumstances, to ensure that there is sufficient oversight for the protection of customers and the integrity of the utility system in Alberta from negative impacts that might result from the company's financial activities, the Commission will, at this time, recommend to the Lieutenant Governor in Council that AltaGas Pacific be designated as an owner of a utility under sections 26 and 27 of the *Gas Utilities Act* and Section 109 of the *Public Utilities Act*. As a condition of approving the share transaction, and pending the actual designation, AltaGas Pacific shall conduct itself as if it had been designated effective from the date of this decision.

²⁵ Exhibit 23010-X0016, response AUGI-AUC-2017NOV09-006.

²⁶ EUB Decision 2006-038, Terasen Utility Services Inc., pages 12-13.

²⁷ *Gas Utilities Designation Regulation*, AR 257/2007 as amended; *Public Utilities Designation Regulation*, AR 194/2006, as amended.

²⁸ Decision 2005-112: AltaGas Utility Holdings Inc., Request for Approval of Share Transfer, Application 1408750-1, October 14, 2005.

²⁹ EUB Decision 2005-112, page 3.

³⁰ Exhibit 23010-X0016, response to AUGI-AUC-2017NOV09-001.

46. Notwithstanding this recommended designation, AltaGas Pacific, as a holding company,³¹ will be eligible for the conditional exemptions from specific financing and reporting requirements that the Commission approved in Decision 21555-D01-2016³² and enacted in Rule 031. Provided that the requirements in Section 3.2 of the rule are met, a utility holding company which is a designated owner of a utility under Section 26(1) of the *Gas Utilities Act*, is not required to obtain the approval of the Commission in advance of an issuance securities (shares and debt of a designated owner) under Section 26(2)(a)(i)(ii) of the *Gas Utilities Act*. Neither is it subject to a host of reporting requirements described in Section 4.1 of the rule. This streamlined process goes some way in meeting AltaGas Group's concern about inefficiencies inherent in the designation of AltaGas Pacific on its operation of its multi-jurisdictional assets.

47. For example, AltaGas Pacific is the direct owner of Pacific Northern, which is a British Columbia public utility. If AltaGas Pacific intends to obtain financing by issuing bonds under Section 26(2)(ii) to finance the operations of Pacific Northern, AltaGas Pacific will not be required to first obtain the Commission's approval under Section 26(2)(a)(ii) of the *Gas Utilities Act*, because of the conditional exemption available under Section 3.2 of Rule 031.

48. Further, although Rule 031 was intended to replace specific exemptions which had been or might be granted to specific utility owners, designated owners are not prevented from applying to the Commission under Section 26 (4) of the *Gas Utilities Act* for a declaration that any part of section 26 (2) of the *Gas Utilities Act* does not apply "... with respect to any transaction or class of transaction specified in the declaration."

49. The Commission finds that all of its considerations in the assessment of the no harm to customers test as a result of the share transaction (subject to the conditions noted above being performed) has been met and the Commission approves the share transaction as applied for by AltaGas Group.

³¹ Rule 031, Conditional Exemption from Specific Financing and Reporting Requirements, Section 2 (k): "utility holding corporation" means a designated owner that directly or indirectly holds securities to which are attached more than 50 per cent of the votes that may be cast to elect directors of an entity that operates a gas utility or an electric utility, but the designated owner does not directly operate the utility itself.

³² Decision 21555-D01-2016: Conditional Exemption from Specific Financing and Reporting Requirements, Proceeding 21555, December 6, 2016.

5 Order

50. It is hereby ordered that:

- (1) AltaGas Utilities Group Inc. is approved and authorized to sell and transfer, and to make on its books a transfer of, all of its outstanding shares or capital stock from its current shareholder, AltaGas Ltd. to its affiliate AltaGas Utility Holdings (Pacific) Inc. with the following conditions:
 - (i) AltaGas Utilities Group Inc. shall cause AltaGas Utilities Inc. to address in AltaGas Utilities Inc.'s next rate application any changes to its costs, service levels, contractual obligations, affiliate or share service agreements or arrangements, changes in risk profile or capital structure, debt financing costs or provisions, or any other areas that may give rise to potential harm to its customers as a direct or indirect result of the Share Transaction; and
 - (ii) if the Share Transaction results in the need to amend either or both of the AltaGas Utilities Inc.'s Inter-affiliate Code of Conduct and AltaGas Utilities Inc.'s Code of Conduct Regulation Compliance Plan, AltaGas Utilities Group Inc. shall cause AltaGas Utilities Inc. to amend these documents accordingly and file them with the Commission.
- (2) Pending the designation of AltaGas Utility Holdings (Pacific) Inc. as an owner of utilities for the purposes of sections 26 and 27 of the *Gas Utilities Act* and Section 109 of the *Public Utilities Act*, AltaGas Utility Holdings (Pacific) Inc. shall conduct itself as if it had been designated effective from the date of this decision.

Dated on January 30, 2018.

Alberta Utilities Commission

(original signed by)

Bill Lyttle
Panel Chair

(original signed by)

Tracee Collins
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
AltaGas Utility Group Inc. (AltaGas Group) Stikeman Elliott LLP

Alberta Utilities Commission
Commission panel
B. Lyttle, Panel Chair
T. Collins, Commission Member
Commission staff
D. Larder (Commission counsel)
N. Mahbub
P. Howard

Appendix 2 – Flow chart of AltaGas Ltd.’s corporate structure prior to the share transaction

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Appendix 2 - Flow
chart of AltaGas Ltd. c

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Appendix 3 – Flow chart of AltaGas Ltd.’s corporate structure after the share transaction

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Appendix 3 - Flow
chart of AltaGas Ltd. c

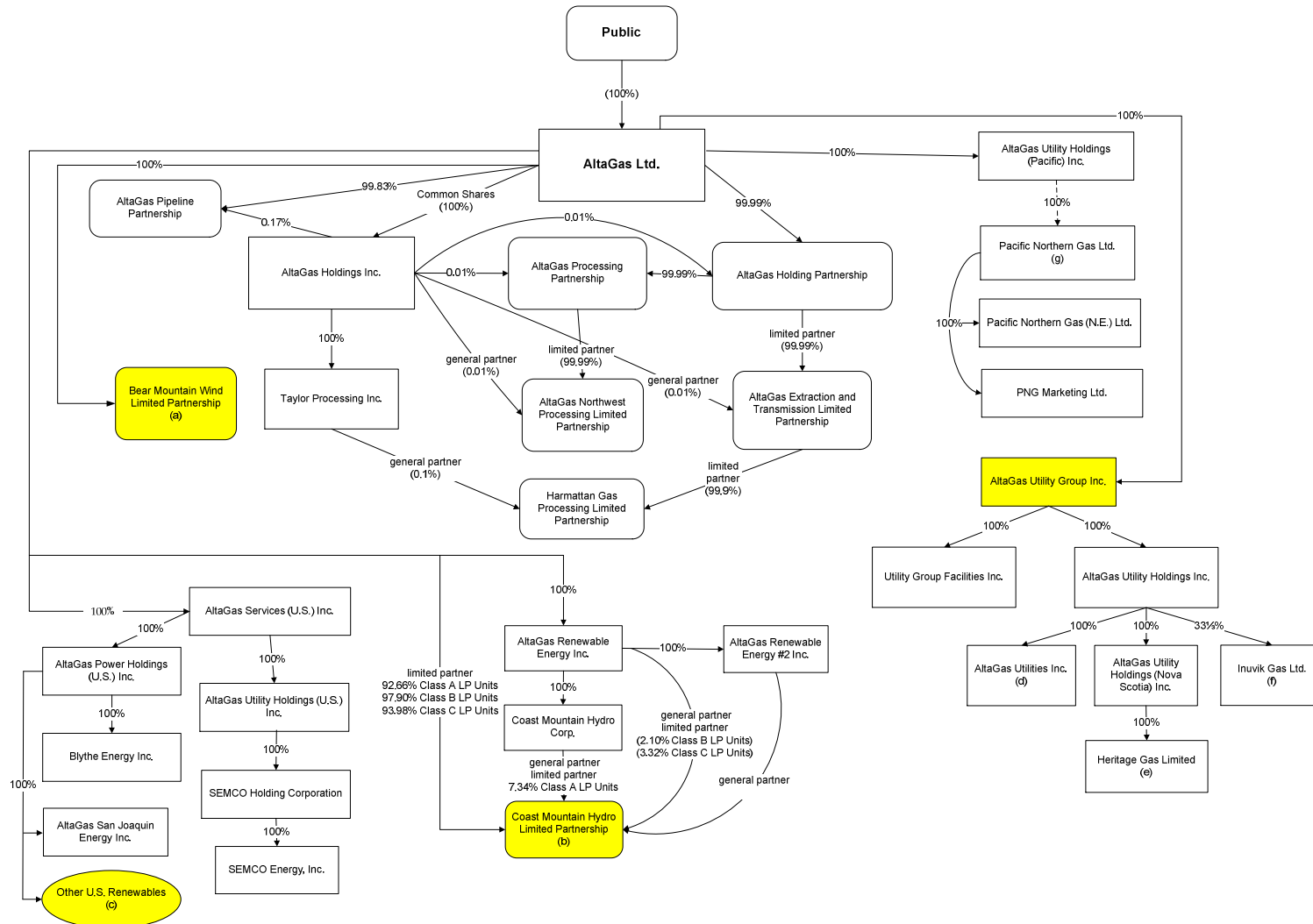
(consists of 2 pages)

Appendix 4 – Section 109 of the *Public Utilities Act* and Sections 26 and 27 of the *Gas Utilities Act*

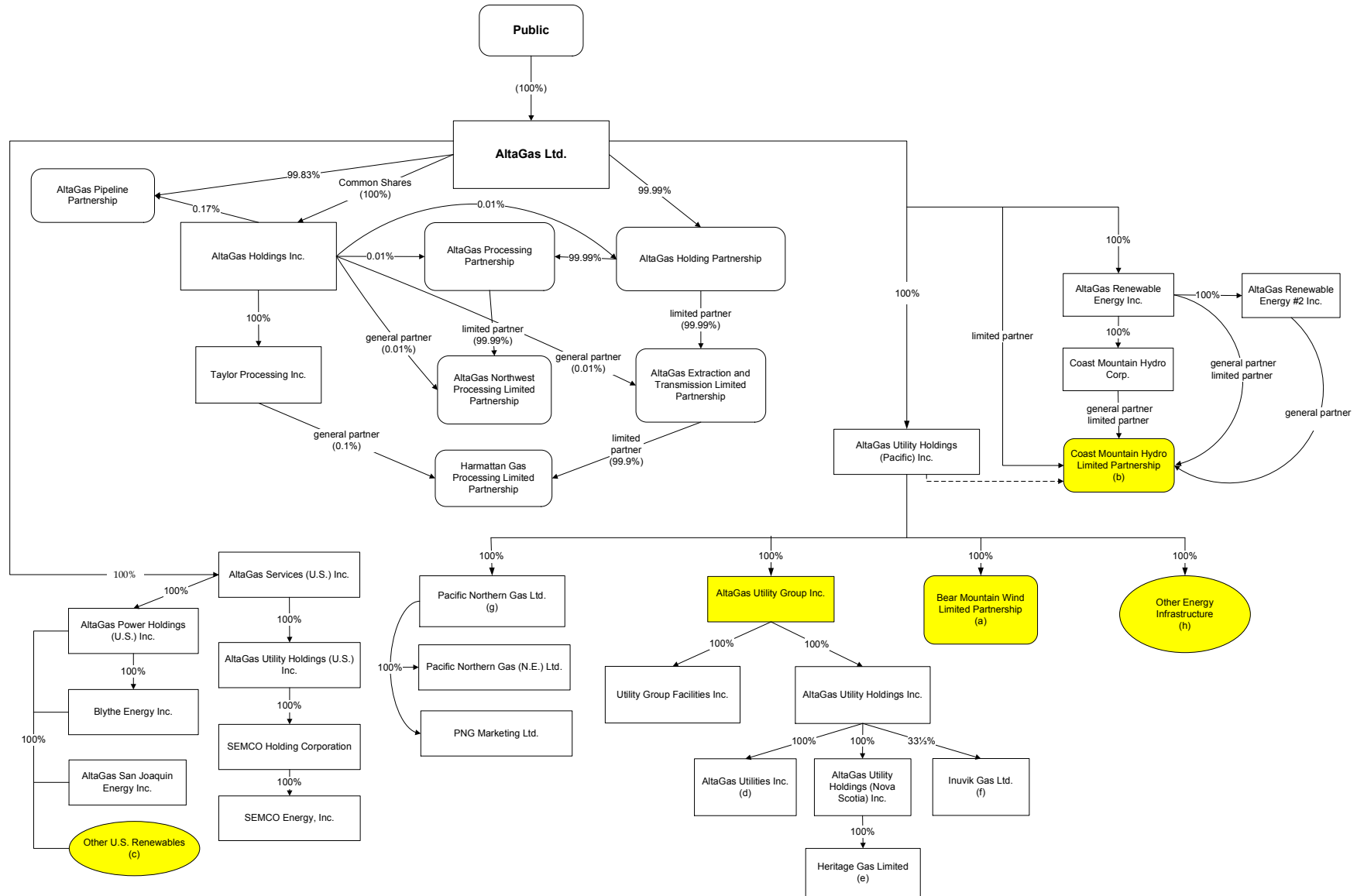


Appendix 4 - Section
109 of the Public Utilit
(consists of 4 pages)

CORPORATE STRUCTURE (SIMPLIFIED) – PRE-SHARE TRANSACTION



REVISED CORPORATE STRUCTURE (SIMPLIFIED) – POST-SHARE TRANSACTION



-3-

**ALTAGAS UTILITY HOLDINGS (PACIFIC) INC.
CERTAIN OPERATING AND HOLDING SUBSIDIARY DESCRIPTIONS POST-SHARE TRANSACTION**

a. Bear Mountain Wind Limited Partnership

Bear Mountain Wind Limited Partnership owns and operates 102 MW of wind generation located near Dawson Creek British Columbia. The electricity generated is sold under long-term contracts to BC Hydro.

b. Coast Mountain Hydro Limited Partnership

Potential for minority interest in Coast Mountain Hydro Limited Partnership which owns and operates a combined 287 MW of hydroelectric (run of river) generation located in northwestern British Columbia. The electricity generated is sold under long-term contracts to BC Hydro.

c. Other United States (US) Renewables

Not applicable following the refinement to the Reorganization.

d. AltaGas Utilities Inc.

AltaGas Utilities Inc. is a public utility regulated by the Alberta Utilities Commission. It owns and operates natural gas distribution facilities serving approximately 79,000 residential, rural and commercial customers in over 90 communities across Alberta.

e. Heritage Gas Limited

Heritage Gas Limited is a public utility regulated by the Nova Scotia Utility and Review Board. It owns and operates natural gas distribution facilities serving approximately 7,000 residential, rural and commercial customers in Nova Scotia.

f. Inuvik Gas Ltd.

Inuvik Gas Ltd. is a public utility regulated by the Northwest Territories Public Utilities Board. It owns and operates natural gas distribution facilities servicing residential, commercial, institutional and municipal customers in the Town of Inuvik in the Northwest Territories.

g. Pacific Northern Gas Ltd.

Pacific Northern Gas Ltd. is a public utility regulated by the British Columbia Utilities Commission. It owns and operates natural gas transmission and distribution facilities serving approximately 42,000 residential, commercial and industrial customers in northern British Columbia.

h. Other Energy Infrastructure

Includes unregulated natural gas processing facilities (approximately 450 MMcf/d of processing capacity) and transportation facilities (approximately 500 MMcf/d of transportation capacity) and other natural gas assets and facilities located in both Alberta and British Columbia. Also includes: wholesale and retail marketing services currently provided in Canada; 17 MW of natural gas-fired power generation in Alberta; and an interest in the Alton natural gas storage facility in Nova Scotia (once construction of the facility is complete).

Section 109

PUBLIC UTILITIES ACT

Chapter P-45

23**Union of utilities**

109(1) The Lieutenant Governor in Council may by regulation designate those owners of public utilities to which this section applies.

(2) When, by a general or special Act, an owner of a public utility that is the subject of a designation under subsection (1) is authorized to unite with the owner of any other public utility, whether or not the owner of that other public utility is the subject of such a designation, the union has no effect unless it is first approved by the Commission and published in The Alberta Gazette.

RSA 2000 cP-45 s109;2007 cA-37.2 s82(25)

GAS UTILITIES ACT

RSA 2000

Chapter G-5

Designated gas utilities

26(1) The Lieutenant Governor in Council may by regulation designate those owners of gas utilities to which this section and section 27 apply.

- (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 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,
 - (b) capitalize
 - (i) its right to exist as a corporation,
 - (ii) a right, franchise or privilege in excess of the amount actually paid to the Government or a municipality as the consideration for it, exclusive of any tax or annual charge, or
 - (iii) a contract for consolidation, amalgamation or merger,
 - (c) without the approval of the Commission, capitalize any lease, or
 - (d) without the approval of the Commission,
 - (i) sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part of it or them, or
 - (ii) merge or consolidate its property, franchises, privileges or rights, or any part of it or them,

and a sale, lease, mortgage, disposition, encumbrance, merger or consolidation made in contravention of this clause is void, but nothing in this clause shall be construed to prevent in any way the sale, lease, mortgage, disposition, encumbrance, merger or consolidation of any of the property of an owner of a gas utility designated under subsection (1) in the ordinary course of the owner's business.

- (3) Notwithstanding subsection (2), the approval, authority, permission or consent of the Commission is not required in or with respect to
- (a) the issue of any shares of its capital stock by an owner of a gas utility under the exercise of an optional right of conversion attaching to any shares, stocks, bonds, debentures, debenture stock or other evidence of indebtedness the issue of which has previously been approved by the Commission or was not required to be approved by the Commission by reason of an existing declaration made under subsection (4),
 - (b) a right of entry, sale, disposition or other proceedings for the enforcement of a mortgage or charge created by trust deed or other instrument or security, in the enforcement of, or pursuant to, the security thereby constituted or in the exercise of the rights or remedies thereby granted or otherwise available at law, if the trust deed or other instrument or security was approved or authorized by the Commission or was not required to be approved or authorized by the Commission by reason of an existing declaration made under subsection (4), or
 - (c) the declaration or issuance of a stock dividend by an owner of a gas utility designated under subsection (1).
- (4) The Commission, on its own initiative or on the application of a person having an interest, may, or on the order of the Lieutenant Governor in Council shall, declare that subsection (2) or any part of it does not apply with respect to any transaction or class of transactions specified in the declaration.
- (5) Where a declaration is made under subsection (4) in respect of a transaction entered into before the making of the declaration, the transaction,
- (a) in the case of a transaction under subsection (2)(d), is deemed to be no longer void and to have been in force and effect from the date of the transaction, and
 - (b) in the case of a transaction under subsection (2)(a), (b) or (c), is deemed not to have been in contravention of that subsection,

except that the declaration does not affect any other rights that have accrued prior to the declaration.

RSA 2000 cG-5 s26;2007 cA-37.2 s82(12)

Prohibited share transactions

27(1) Unless authorized to do so by an order of the Commission, the owner of a gas utility designated under section 26(1) shall not sell or make or permit to be made on its books any transfer of any share or shares of its capital stock to a corporation, however incorporated, if the sale or transfer, by itself or in connection with previous sales or transfers, would result in the vesting in that

corporation of more than 50% of the outstanding capital stock of the owner of the gas utility.

(2) Every purported

(a) assignment or transfer, or

(b) agreement for assignment or transfer,

by or through any person or corporation in contravention of subsection (1) is void and of no effect.

(3) Nothing in subsection (1) shall be construed to prevent the holding of stock lawfully acquired before July 1, 1923.

RSA 2000 cG-5 s27;2007 cA-37.2 s82(12)