

THE PROVINCE OF ALBERTA

GAS UTILITIES ACT

ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER of a natural gas utility services agreement between AltaGas Utilities Inc. and Buffalo Lake Metis Settlement and a change in AltaGas Utilities Inc.'s Rate Rider "A" respecting Buffalo Lake Metis Settlement

ORDER U2000-236

Application Nos. 990523 and 990622
File Nos. 6675-B32 and 6675-B32-1

AltaGas Utilities Inc. (AltaGas) has filed an application with the Alberta Energy and Utilities Board (EUB) for approval to enter into a natural gas utility services agreement with Buffalo Lake Metis Settlement (the Settlement) for a period of 10 years in accordance with the terms of a Natural Gas Utility Services Agreement (the Agreement) which is attached as Schedule "A" to this Order.

Under the Agreement, AltaGas will be granted an exclusive license to construct, maintain and operate the gas distribution system within the settlement. The EUB notes that the Agreement abides by the principles enunciated in Metis Settlement General Council Policy GC-9804.

The Agreement also contains provision for early termination, upon proper notice, to allow the Settlement to purchase the Gas Distribution System. However, the sale of the Gas Distribution System by AltaGas would require EUB approval, pursuant to section 25.1 of the Gas Utilities Act. Any future application of this nature would be subject to full EUB review. Consequently, approval of the Agreement should not be construed in any manner so as to fetter the EUB's discretion with respect to any future application for approval of the sale of the Gas Distribution System. In particular, the Board will not be bound by the terms and conditions of purchase outlined in Schedule "B" to the Agreement.

AltaGas has also applied to the EUB for an Order approving an amendment to Rate Rider "A" (surcharge for a franchise fee). This amendment will allow for collection of a service fee in the Settlement of 7% of the gross revenue of AltaGas derived from the supply of natural gas to its customers within the Settlement. The Settlement will accept this payment in lieu of a business property contribution and all other fees, levies, assessments, taxes, contributions, licenses, or other charges for rights or interests acquired by AltaGas under the Agreement. The EUB notes that the collection of the service fee is in accordance with the Agreement and Metis Settlement General Council Policy GC-9804.

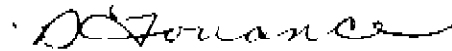
Notice of the applications was published and no objections were received.

The EUB considers that the privilege or franchise contained in the Agreement is necessary and proper for the public convenience and properly conserves the public interests. The EUB notes that AltaGas and the Settlement have given the EUB consent to proceed with the application without a hearing.

Therefore, the Alberta Energy and Utilities Board, pursuant to Sections 36 and 40 of the *Gas Utilities Act*, R.S.A. 1980, c. G-4, hereby orders as follows:

1. Application No. 990523 by AltaGas Utilities Inc. dated November 16, 1999 is approved,
2. Application No. 990622 by AltaGas Utilities Inc. dated December 10, 1999 with respect to Buffalo Lake Metis Settlement is approved and the rate for Buffalo Lake Metis Settlement as indicated on Rate Rider "A" attached as Schedule "B" to this Order, becomes effective upon the effective date of the Natural Gas Utility Services Agreement.
3. Nothing in this Order shall bind, affect or prejudice the Board in any way in its consideration of any other matter or question relating to AltaGas Utilities Inc. or Buffalo Lake Metis Settlement.

DATED at the City of Edmonton, in the Province of Alberta, on July 6, 2000.



ALBERTA ENERGY AND UTILITIES BOARD

SCHEDULE "A"

NATURAL GAS UTILITY SERVICES AGREEMENT

AMONG:

ALTAGAS UTILITIES INC.

and

BUFFALO LAKE METIS SETTLEMENT

and

METIS SETTLEMENTS GENERAL COUNCIL

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NATURAL GAS UTILITY SERVICES AGREEMENT

AMONG:

ALTAGAS UTILITIES INC.
a body corporate having an office in Alberta
(the "Utility")

- and -

BUFFALO LAKE METIS SETTLEMENT
as Incorporated under the *Metis Settlements Act*
(the "Settlement")

- and -

METIS SETTLEMENTS GENERAL COUNCIL
as Incorporated under the *Metis Settlements Act*
(the "General Council")

ARTICLE 1. CONTENT

1.1 Background

The Settlement Area is a part of a Metis land base held in fee simple by the General Council and protected in the Constitution of Alberta. Provincial legislation recognizes the unique land ownership and government roles of the General Council and the Settlement, including the power to make laws for the Settlement Area governing the interests that can be created in land, their assessment and taxation, and the regulation of activities such as the provision of Natural Gas Service. The Utility is a natural gas utility whose service area includes the Settlement Area pursuant to a franchise area approval issued under the *Gas Distribution Act*.

1.2 Purpose

The General Council, Settlement and Utility have made this agreement to:

- (a) Ensure safe, reliable and economical Natural Gas Service can be provided to potential Consumers within the Settlement Area;
- (a.1) Despite their agreement that the Utility Right of Way comprises a grant of interest and right to use land within the meaning of section 2.9(3) of the *Land Policy*, the Settlement undertakes to use its reasonable efforts to approve this Agreement by by-law in accordance with section 2.9(2) of the *Land Policy* within a reasonable time.

- (j) "Resident" means any individual, group of individuals, firm or body corporate with premises within the Settlement Area, and includes the Settlement;
- (k) "Settlement Area" means the land described as Buffalo Lake Metis Settlement Area in Letters Patent issued to the General Council as of the date of this Agreement;
- (l) "Service Fee" means the fee described in article 6.1 of this Agreement;
- (m) "Supply" means to distribute and deliver;
- (n) "Terms and Conditions of Service" means the standards, regulations, practices, and terms and conditions that apply to service provided by the Utility as approved from time to time by the Board that are contained in legislation regulating the Utility and in the Utility's general conditions of service; rates, tolls and charges; natural gas service rules; transportation service regulations; core market transportation service regulations; and core market buy/sell regulations;
- (o) "Utility's Revenues" shall mean the billed revenues the Utility derives in the form of fixed charge, base energy charge, demand charge and Cost of Gas, from supplying Natural Gas Service to the Settlement Area;
- (p) "Utility Right of Way" means a utility interest in the lands as identified from time to time in Schedule "A" of this Agreement.

and words and expressions defined in the *Metis Settlements Act*, or in regulations made under it, have the same meaning when used in this Agreement, unless the context makes such an interpretation unreasonable.

1.4 Interpretation

- (a) In this Agreement, unless it would not make sense in the context:
 - (i) References to "this Agreement" include the schedules and renewed or amended versions of the Agreement,
 - (ii) References to persons include corporations and other legal entities, such as the Settlement,
 - (iii) References to things done by a party to the Agreement include things done by that party's agents or employees, and

2.2 Terms and Conditions of Service

The Supply of Natural Gas Service to Consumers will be governed by the Terms and Conditions of Service and the Terms and Conditions of Service will have priority when inconsistent with this Agreement.

2.3 Term and Termination

- (a) This Agreement is in effect for a period of ten (10) years from the Effective Date, unless terminated earlier as provided for in this article.
- (b) Either the Settlement or the Utility can terminate this Agreement by notifying the other parties, at least 2 years in advance, that they wish to terminate the agreement on a specified date. No such notice can be given before June 1, 2002.
- (c) When the Settlement provides notice of termination, it must also provide notice that it wishes to purchase the Gas Distribution System based on a pricing formula set out in Schedule "B".
- (d) If, at the end of the term or upon termination, the Settlement and Utility cannot agree on the terms of the purchase of the Gas Distribution System after completing the mediation process provided for in this Agreement, either may refer the matter to the Board for determination.
- (e) The parties acknowledge any purchase of the Gas Distribution System will be subject to approval by the Board.

ARTICLE 3. LAND INTERESTS AND USE

3.1 Existing Land Rights

- (a) This Agreement does not affect any rights or interests in land registered or filed by the Utility in accordance with s.8 of the *Metis Settlements Land Protection Act*, including those described in Schedule "A".
- (b) The Settlement and General Council confirm that, for the purpose of supplying Natural Gas Service to the Settlement Area, the Utility has, whether previously existing or by this Agreement, the Utility Right of Way in respect of the lands shown in Schedule "A".

3.5 Clearing and Maintaining the Land

- (a) The Utility will maintain all Utility Right of Ways in a manner satisfactory to the Settlement and will not remove trees or plants without consulting the Settlement, except where required in an emergency or for safety reasons.
- (b) The Utility will not dispose of waste materials anywhere in the Settlement Area without the Settlement's consent.
- (c) The Utility will carry out its tree and vegetation control operations in accordance with the Industrial Vegetation Management Association of Alberta maintenance and vegetation control standards as amended or replaced from time to time.
- (d) The Utility will not use herbicides or sterilants on or near a Utility Right of Way without the written consent of the Settlement.
- (e) The Settlement will assist the Utility in obtaining any timber permits needed to allow the cutting or removal of trees for proper clearing and maintenance of all Utility Right of Ways in the Settlement Area and the Utility will pay the related permit fees, including the value of any salvageable timber removed from the Settlement Area by the Utility.

3.6 Repairs to Public Places

- (a) When the Utility does any work on, in, or under a public place in the Settlement Area in order to Construct, Maintain or Operate its Gas Distribution System it must complete the work within a reasonable time.
- (b) On completing the work, the Utility must restore the public place to a state of repair as near as practicable to the condition that existed immediately before the work started, unless the Settlement agrees that some other condition is acceptable.
- (c) If the Utility fails to restore the place to the required condition, the Settlement may, on giving reasonable notice to the Utility, do the restoration work and the Utility will be liable for the reasonable associated costs.

- (b) If the Utility has not restored the land within a reasonable time of the Settlement telling it to, the Settlement can do the work itself and the Utility will pay the corresponding reasonable costs.

4.3 Relocation of Facilities

- (a) The Utility will, at the request of the Settlement, remove, alter or relocate any part of its Gas Distribution System if doing so does not constitute breach of contract with any Consumer or contravene any statute, regulation or regulatory order.
- (b) The Utility and the Settlement will share the cost of the relocation in proportion to the benefit each gains from the relocation.
- (c) If the Utility and the Settlement cannot agree on the cost sharing for a relocation, the matter will be determined as provided for in article 5.8.

4.4 Shared Use

- (a) The Settlement may, for any reasonable community purpose, share in the use of the trenches excavated by the Utility provided the use does not interfere with the Utility's use and complies with the *Safety Codes Act*, the *Gas Distribution Act*, CSA Z66.2 and related regulations as amended and replaced from time to time.
- (b) The Settlement will pay the reasonable cost of any additions to the Utility's facilities required to enable this shared use.
- (c) The Settlement indemnifies the Utility from all damage, injury, claims and costs resulting from the Settlement's shared use of trenches.

4.5 Work Affecting the System

- (a) Before the Settlement has any work done within the Settlement Area that can reasonably be expected to affect the Gas Distribution System, it will:
- (i) In normal circumstances, give to the Utility 10 days notice in writing; and
- (ii) In case of an emergency, inform the Utility by phone call or fax.

- (i) Settlement development plans and bylaws;
 - (ii) Environmentally sensitive areas; and
 - (iii) Special areas which may, for example, be historically, traditionally, or culturally significant.
- (c) The Utility will submit plans to the Settlement and obtain its approval before proceeding with any addition or alteration to the Gas Distribution System that requires access to additional lands or changes the use of an existing Utility Right of Way.

5.4 Employment Opportunities

- (a) The Utility will not advertise or award any contract for work related to the Construction, Operation or Maintenance of the Gas Distribution System within the Settlement Area, without first providing an opportunity for the Settlement to submit a local bid on the work. The Utility will provide such opportunity by sending an invitation to tender to the Settlement.
- (b) For the purposes of this article, "local bid" means a bid submitted by the Settlement on its own behalf or on behalf of one or more Residents or a business controlled by Metis Settlements or their residents.
- (c) The Utility will accept the local bid, if in the opinion of the Utility, it is complete, competitive, timely and from someone with the skills and equipment needed to do the work.
- (d) If the Utility does not accept the local bid, it will explain to the Settlement why the bid is unacceptable and allow at least 10 days for another bid to be prepared and submitted to an open bidding process.
- (e) Subject to the preceding terms of this article, the Utility may open bidding to any contractor who is prepared to operate under the same conditions as imposed on the Utility by this Agreement, and, all other things being equal, will give priority to a local bid.

5.5 Training Opportunities

The Utility will contract with the Settlement for the part-time services of one individual who will be trained at the Utility's expense and who, once trained and capable, will perform under the direction of the Utility such functions as standby;

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St. Paul, Alberta
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- (d) The Council and Utility will keep each other, and the General Council, informed of any changes in their representative or contact address.

5.8 Mediation

- (a) If a difference develops between the Settlement and Utility in carrying out this Agreement, both will do their best to resolve the difference within 30 days by discussion and mediation, and only after that will either party begin arbitration or litigation.
- (b) Either the Settlement or Utility may, after making a reasonable and honest effort to resolve a difference by discussion, request mediation assistance from the Metis Settlements Appeal Tribunal as provided for under the *Metis Settlements Act*.
- (c) If the Metis Settlements Appeal Tribunal appoints a mediator, both the Settlement and Utility will do their best to work with the mediator to resolve the difference.
- (d) This article 5.8 does not apply to the Utility's Terms and Conditions of Service.
- (e) Nothing in this article limits the right of the Settlement or the Utility to proceed immediately to arbitration or litigation:
 - (i) For those claims to which the indemnity and liability provisions of this Agreement apply;
 - (ii) Where necessary to preserve limitation periods; or
 - (iii) To comply with other deadlines.

6.2 Initial Payments

Initial payments will be those set out in Schedule "C".

6.3 Compensation for Damages

- (a) Unless required by 6.3(b) or an order of the Land Access Panel, the Utility will not pay any Resident damages arising from reasonable and necessary work done to provide Natural Gas Service.
- (b) The Utility will compensate a Resident for special damages where those damages are not reasonably and necessarily incurred to provide Natural Gas Service.
- (c) If the Utility and Resident cannot agree on the compensation payable for special damages, the matter will be referred to the Land Access Panel for compensation determination according to section 118 of the *Metis Settlements Act*.
- (d) If the Settlement approves a grant of utility right of way and an occupant applies to the Land Access Panel for a determination of compensation in relation to the grant, this Agreement may be provided to the Panel as evidence of the common understanding that the grant is in support of developing the community and that the grant is not something requiring or warranting compensation.

ARTICLE 7. GENERAL MATTERS

7.1 Utility's Legislated Powers

The Settlement and General Council consent to the Utility exercising its powers under the *Water, Gas and Electric Companies Act*, the *Gas Utilities Act*, the *Gas Distribution Act* and the *Public Utilities Board Act* within the Settlement Area.

7.2 Compliance with Laws

The Utility will, at its own expense, promptly comply with all laws that apply to a utility right of way and the construction or operation of the Utility's facilities on it.

- (b) The Settlement indemnifies the Utility from any damage, injury, claims, or costs incurred by the Utility in relation to the Gas Distribution System due to damages caused by negligent acts or omissions of the Settlement, its employees, or its agents.

7.8 Waiver

No one can be excused from a responsibility under this Agreement except in writing, and if any party fails to meet a responsibility, silence by another will not be considered as acceptance of the failure.

7.9 Amendment

This Agreement can only be amended by another written agreement signed by the Settlement, General Council, and the Utility, subject to the provisions of article 3.3(c).

7.10 Assignment

- (a) This Agreement, and everything contained in it, binds and benefits the parties and their respective successors and assigns.
- (b) The Utility can assign this Agreement, subject to any necessary regulatory approvals, with the consent of the Settlement.
- (c) No party is to be considered the agent of another party.
- (d) If any provision of this Agreement is held to be invalid or unenforceable, then the remaining provisions of this Agreement will not be affected thereby and will continue to be held valid and enforceable.

7.11 Entire Agreement

Subject to article 3.3(c), this Agreement constitutes the whole of the contract between the parties and supercedes the provisions of any prior agreement between the parties relating to this subject matter.

7.12 Force Majeure

No party shall be responsible for any failure to comply with or for any delay in performance of the terms of this Agreement where such failure or delay is directly

SCHEDULE "B"

RATE RIDER "A"	FRANCHISE TAX RIDERS
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Municipalities

Additions to be made to the rates of customers resident in municipalities that have agreed to accept a percentage of gross revenue of the special franchise tax in lieu of a property tax pursuant to Section 360 of the Municipal Government Act, 1994, c. M-26.1 (previously Section 14(7) and 14(8) of the Municipal Taxation Act).

The percentage shown to be applied as an addition to the total billings calculated.

Municipality	District	Type	Rate (%)	Board Orders	
				Franchise Tax	Transportation
* Athabasca	Athabasca	Town	5.0	U97149	
Barrhead	Barrhead/Westlock/ Morinville	Town	3.1	U98162	
* Beaumont	Leduc/Calmor	Village	5.75	E95093	
Botha	Stettler	Village	4.0	E92122	
Calmor	Leduc/Calmor	Town	3.1	E90048	
Della	Hanna	Village	4.0	E92122	
Donalds	Stettler	Village	4.0	E92122	
Drumheller	Drumheller	City	7.0	U97134	
Elk Point	St. Paul	Town	6.0	U99062	
Glendon	St. Paul	Village	4.0	E92122	
Grande Cache	Grande Cache	Town	6.952	U99084	
* Hairy Hill	St. Paul	Village	5.0	E95078	
Hanna	Hanna	Town	3.1	E78087	
High Level	High Level	Town	6.8	E95027	
High Level Forest Products			3.0		E95027
* Leduc ⁽¹⁾	Leduc/Calmor	City	5.75	E94060	E94063
Mawatha Beach	Athabasca	SV ⁽²⁾	3.1	E95124	
Morinville ⁽¹⁾	Morinville	Town	6.1	E95081	
Morin	Drumheller	Village	4.0	E99081	
Munson	Drumheller	Village	5.0	E92108	
New Barabta	Leduc/Calmor	Village	6.0	U98138	
* Pincher Creek	Pincher Creek	Town	5.1	E92107	
Radway	Westlock	Village	3.0	E90048	
St. Paul	St. Paul	Town	6.0	E91081	

EFFECTIVE DATE:	REPLACING RATE EFFECTIVE:	Page 1 of 2 RIDER "A"
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FRANCHISE TAX RIDERS

RATE RIDER "A"

Municipality	District	Type	Rate (%)	Board Orders	
				Franchise Tax	Transportation
Sunset Beach ⁽¹⁾	Athabasca	Summer Village	6.1	U97151	
Stettler ⁽¹⁾	Stettler	Town	6.0	E94061	EB4053
Three Hills	Three Hills	Town	4.75	U98033	
Two Hills	Two Hills/Willingdon	Town	5.1	E94038	
Willingdon	Two Hills/Willingdon	Village	5.0	U98105	

⁽¹⁾ The Municipality has elected to have the percentage of gross revenue from the special franchise collected on sales revenue, transportation service revenue, and a deemed value for gas applied to volumes transported.

⁽²⁾ SV denotes "Summer Village"

* Periodic changes to franchise tax rates have been pre-approved by the Board.

Mets Settlements

Additions to be made to the rates of customers resident in Mets Settlements that have by bylaw approved Utility Services Agreements providing for the payment of annual utility service fees calculated as a percentage of gross revenues.⁽³⁾ The percentage shown is to be applied as an addition to the total billings calculated.

Mets Settlement	District	Rate (%)	Board Order
Buffalo Lake	St. Paul	7.0	
Fishing Lake	St. Paul	6.0	U97153
Kildno	St. Paul	7.0	

⁽³⁾ The *Mets Settlements Act* (S.A. 1996 Chapter M-14.3) enables the Mets Settlements General Council to legislate by Policy and Settlement Councils to legislate by bylaw on matters related to the operations of utilities within the settlement areas, including the granting of interests in land, the assessment and taxation of these interests, and the licensing of related activities. [s.222(1); Boh.1, ss.14, 19]. Under *Mets Settlements General Council Public Utilities Policy* (GC-P9804; Alberta Gazette, Nov.30, 1998, p.2221) a Settlement may enter into Utility Service Agreement allowing a utility to use land and provide utility services in the Settlement Area and providing for the utility to pay an all inclusive annual service fee. The fee may be determined as a percentage of gross revenue received from services provided in the Settlement Area. Each of the listed Settlements has entered into a Utility Service Agreement with AltaGas Utilities. Under the *Public Utility Policy* [s.2.3(3)] the Service Agreement takes effect on being approved by bylaw and by the Alberta Energy and Utilities Board.

Page 2 of 2
RIDER "A"

REPLACING RATE EFFECTIVE:

EFFECTIVE DATE:

AltaGas
utilities