



## **AltaGas Utilities Inc.**

**Gas Utilities Act Code of Conduct Regulation, AR 183/2003  
Audit Exemption for 2013 and 2014**

**June 19, 2014**

**The Alberta Utilities Commission**

Decision 2014-176: AltaGas Utilities Inc.

Gas Utilities Act Code of Conduct Regulation, AR 183/2003

Audit Exemption for 2013 and 2014

Application No. 1610320

Proceeding No. 3084

June 19, 2014

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## 1 Introduction

1. On February 18, 2014, AltaGas Utilities Inc. (AUI) filed an application with the Alberta Utilities Commission (AUC or Commission) pursuant to Section 41(1)(a) of the *Gas Utilities Act Code of Conduct Regulation*, AR 183/2003, requesting an exemption from the requirement to provide the Commission with audit reports for the years 2013 and 2014 pursuant to Section 40(3) of the *Gas Utilities Act Code of Conduct Regulation*. Section 41(1)(a) enables a gas distributor or default supply provider, or its affiliated retailer, to apply to the Commission for an exemption from all or any provision of the *Gas Utilities Act Code of Conduct Regulation*.

2. Section 37 of the *Gas Utilities Act Code of Conduct Regulation* requires a gas distributor or default supply provider, and its affiliated retailer, to each appoint an independent auditor to perform a compliance audit on an annual basis in accordance with the *Gas Utilities Act Code of Conduct Regulation*.

3. Section 41(2)(a) of the *Gas Utilities Act Code of Conduct Regulation* provides:

**41(2)** The Commission must not approve an exemption or an alternative compliance plan unless the Commission is satisfied that it is in the public interest to do so and that

- (a) any exemption does not significantly affect the obligations of the applicant, or that the obligations can be or will be met in other ways....

4. The Commission issued a notice of application on February 24, 2014, requesting parties who wished to intervene in the proceeding to submit a statement of intent to participate (SIP) to the Commission by March 10, 2014. The Commission did not receive any SIPs.

5. On March 12, 2014, the Commission issued five information requests to AUI. AUI responded to the information requests on March 24, 2014.

6. On April 7, 2012, the Commission issued three additional information requests to AUI. AUI responded to the additional information requests on April 10, 2014.

7. The Commission considers that the record for this proceeding closed on April 10, 2014.

## 2 Background

8. The purpose of the *Gas Utilities Act Code of Conduct Regulation* is:

... to ensure that distribution companies, default supply providers and retailers conduct themselves in a manner that supports the competitive operation of the retail natural gas

market and that their conduct does not distort that market by offering unfair advantages to retailers.<sup>1</sup>

9. Operations are to be conducted in a manner that is consistent with the eight areas that are addressed in Part 2, Part 3 and Part 4 of the *Gas Utilities Act Code of Conduct Regulation*:

1. equality of treatment for customers
2. confidentiality of customer information
3. equality of treatment of retailers
4. business practices
5. prevention of unfair competitive advantage
6. maintenance of separate records and accounts
7. development of a compliance plan, and related reporting and monitoring
8. compliance audits

10. AUI is a gas distributor and default supplier within the meaning of the *Gas Utilities Act*.<sup>2</sup> AUI is a wholly owned subsidiary of AltaGas Utility Holdings Inc., which, in turn, is a wholly owned subsidiary of AltaGas Utility Group Inc. (AUGI). AUGI is wholly owned by AltaGas Ltd. (AltaGas), a publically owned retail gas supplier. Consequently, AltaGas is considered to be an affiliated retailer of AUI within the meaning of the *Gas Utilities Act Code of Conduct Regulation*.

11. Until December 16, 2013, ECNG Energy L.P. (ECNG) was an indirectly-owned subsidiary of AltaGas and an affiliated retailer of AUI. As of December 16, 2013, ECNG is no longer a subsidiary of AltaGas or an affiliate of AUI.<sup>3</sup>

12. AUI has undergone compliance audits four times since 2005. The first audit was by Ernst & Young for a period of four months ending December 31, 2005. The second audit was performed by the AUC staff for the year ending December 31, 2007. The third and fourth audits were performed by Ernst & Young for the years ending December 31, 2010 and December 31, 2012, respectively. In all instances, the resulting audit opinions stated that AUI was, in all material respects, in compliance with the *Gas Utilities Act Code of Conduct Regulation*.

### **3 The application**

13. AUI provided the following grounds in support of its application for an exemption from the requirement to conduct a compliance audit for each of 2013 and 2014:

- (a) AUI has demonstrated material compliance in previous years. In 2013, Ernst & Young LLP (Ernst & Young) performed AUI's audit for 2012 and found AUI to be in compliance in all material aspects with the *Gas Utilities Act Code of Conduct Regulation*.

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<sup>1</sup> Bulletin 2010-25, *Gas Utilities Act Code of Conduct Regulation*, AR 183/2001 process changes and clarification of requirements, September 17, 2010.

<sup>2</sup> R.S.A. 2000, c. G-5.

<sup>3</sup> Decision 2014-109: ECNG Energy L.P., Termination of the ECNG Plan, Application No. 1610274, Proceeding No. 3045, April 16, 2014.

- (b) AUI did not self-identify any instances of non-compliance for 2013 and all instances of non-compliance identified by AUI in 2011 and 2012 were remedied prior to annual reports being filed with the Commission.
- (c) An exemption from the requirement to conduct audits for 2013 and 2014 would be reasonable and would be consistent with regulatory efficiency.

14. Further, in its response to an information request from the Commission, AUI estimated that an audit for 2013 would cost approximately \$35,000, while a joint audit for AUI and AltaGas Ltd. would cost approximately \$61,464.38. AUI also indicated that if an audit is required, a joint audit is preferable.

#### 4 Commission findings

15. Pursuant to Section 37 of the *Gas Utilities Act Code of Conduct Regulation*, compliance audits are mandatory and, as such, AUI bears the onus of satisfying the Commission that an exemption from this requirement is warranted pursuant to Section 41(2)(a) of the *Gas Utilities Act Code of Conduct Regulation*.

16. The Commission considers that AUI's submission that it has complied with the *Gas Utilities Act Code of Conduct Regulation* in the years in which audits were conducted does not ensure that the company has been in compliance in 2013 or will be in compliance in 2014. Additionally, AUI experienced recurrent issues of non-compliance between the years 2010 and 2012, particularly with respect to Section 3<sup>4</sup> and Section 9<sup>5</sup> of the *Gas Utilities Act Code of Code Regulation*. Although no issues of non-compliance were identified and reported by AUI for 2013, an audit may identify non-compliance instances undetected by AUI.

17. Furthermore, the Commission finds that AUI's recent implementation of the natural gas settlement system<sup>6</sup> may generate changes in AUI's operations in the upcoming months, and considers that this fact militates against the granting of an exemption from the requirement for a 2014 compliance audit.

18. The Commission finds that AUI has not discharged its onus to establish that exempting it from compliance audits for the years 2013 and 2014 is in the public interest, and that any exemption will not significantly affect AUI's obligations, or that its obligations can be and will be met in other ways. Therefore, the Commission denies AUI's request pursuant to Section 41(1)(a) of the *Gas Utilities Act Code of Conduct Regulation* for an exemption from the requirement to appoint an independent auditor to conduct an audit, and provide the Commission with audit reports for each of the 2013 and 2014 calendar years.

19. With respect to the 2013 compliance audit, the Commission is willing to consider waiving the requirement in Section 37 of the *Gas Utilities Act Code of Conduct Regulation* for

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<sup>4</sup> Application No. 1607122, Proceeding No. 1431, AUI 2010 *Gas Utilities Act Code of Conduct Regulation* Audit Report, Appendix B. Application No. 1608290, AUI 2011 Annual Compliance Report, Schedule A.

<sup>5</sup> Ibid. Application No. 1610058, Proceeding No. 2906, AUI 2012 Compliance Contravention Report, Section 2.1.

<sup>6</sup> Decision 2013-465: AltaGas Utilities Inc., 2014 Annual PBR Rate Adjustment Filing, Application No. 1609923, Proceeding ID No. 2831, December 23, 2013, paragraph 70.

each gas distributor or default service provider and its affiliated retailer to appoint an independent auditor. However, the Commission will only consider waiving this requirement if AUI and AltaGas can demonstrate that a combined audit could achieve the purpose of the *Gas Utilities Act Code of Conduct Regulation* on a cost effective basis, and that the combined audit will meet the substantive requirements of the *Gas Utilities Act Code of Conduct Regulation*.

## 5 Order

20. It is hereby ordered that:

- (1) AUI's application for an exemption under Section 41(1)(a) of the *Gas Utilities Act Code of Conduct Regulation* from the requirement to appoint an independent auditor to conduct an audit pursuant to Section 37 of the *Gas Utilities Act Code of Conduct Regulation* is denied.
- (2) AUI is directed to file an application, requesting approval of its auditor for the 2013 calendar year as required under Section 38(1)(a) of the *Gas Utilities Act Code of Conduct Regulation* by July 15, 2014.
- (3) Consistent with its previous practice, AUI may file the auditor's work plan describing the audit, the review procedures to be used and the scope of the work, as required under Section 38(1)(b) of the *Gas Utilities Act Code of Conduct Regulation*, simultaneously with the application for approval of the auditor. Otherwise, the Commission will set a date for filing of the auditor's work plan once AUI's appointed auditor is approved by the Commission.

Dated on June 19, 2014.

**The Alberta Utilities Commission**

*(original signed by)*

Kay Holgate  
Commission Member



## Appendix 1 – Proceeding participants

Name of organization (abbreviation) counsel or representative
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AltaGas Utilities Inc. (AUI) N. J. McKenzie
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The Alberta Utilities Commission
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Commission Panel
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Kay Holgate, Commission Member
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Commission Staff
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R. Finn (Commission counsel)
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L. Desaulniers (Commission counsel)
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C. Arnot
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L. Maruejols
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## Appendix 2 – Summary of Commission directions

This section is provided for the convenience of readers. In the event of any difference between the directions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail.

1. AUI is directed to file an application, requesting approval of its auditor for the 2013 calendar year as required under Section 38(1)(a) of the *Gas Utilities Act Code of Conduct Regulation* by July 15, 2014. .... Paragraph 20(2)