



AltaGas Utilities Inc.

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

May 3, 2011

The Alberta Utilities Commission

Decision 2011-193: AltaGas Utilities Inc.

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

Audit Exemption

Application No. 1607029

Proceeding ID. No. 1089

May 3, 2011

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The Alberta Utilities Commission

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1 Introduction

1. On February 15, 2011, AltaGas Utilities Inc. (AUI) filed an application with the Alberta Utilities Commission (the AUC or the Commission). The application requests an exemption from conducting a compliance audit for the 2010 audit year, pursuant to Section 41(1) (a) of the *Gas Utilities Act Code of Conduct Regulation, AR 183/2003*. This section 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. Pursuant to Section 41(2) (a) of the *Gas Utilities Act Code of Conduct Regulation* the Commission can not approve an exemption unless the Commission is satisfied that it is in the public interest to do so and that 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 22, 2011, requesting parties who wished to intervene in the proceeding to submit a statement of intent to participate (SIP) to the Commission by 2 p.m. on March 11, 2011.

5. The Commission received one SIP from the Office of the Utilities Consumer Advocate (the UCA), dated March 11, 2011.

6. On March 22, 2011, AUI provided a letter in response to the concerns of the UCA as outlined in its SIP.

7. The Commission considers that the record for this proceeding closed on March 22, 2011.

2 Background

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

“... to ensure that distribution companies, default supply providers and [affiliated] 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.”¹

9. Operations are to be conducted in a manner that is consistent with the *Gas Utilities Act Code of Conduct Regulation* with regard to:

- equality of treatment for customers
- confidentiality of customer information
- equality of treatment of retailers
- business practices
- prevention of unfair competitive advantage
- maintenance of separate records and accounts
- development of a compliance plan, and related reporting and monitoring
- compliance audits

10. AUI is a wholly-owned subsidiary of AltaGas Utility Holdings Inc. which in turn is a wholly-owned subsidiary of AltaGas Utility Group Inc. AUI is a gas distributor and default supplier within the meaning of the *Gas Utilities Act* and is an indirect wholly-owned subsidiary of AltaGas Ltd. AUI has two affiliated retailers; AltaGas Energy Limited Partnership (AltaGas Energy)² and ECNG Energy LP. (ECNG)

11. Prior to January 1, 2010, AltaGas Energy and ECNG did not operate or have any customers in AUI’s service territory. AltaGas Energy³ and ECNG⁴ have applications currently before the Commission requesting exemptions from the requirement to conduct an audit for the 2010 audit year. Both AltaGas Energy and ECNG acknowledge that in 2010 several of their commercial and industrial customers carried on business in AUI’s service territory.

3 The application

12. AUI provided the following basis in support of its application for an exemption from the requirement to conduct a compliance audit in 2011 for the 2010 audit year:

- a) AUI submits that in 2008, AUC staff performed AUI’s Inter-Affiliate Code of Conduct audit and *Gas Utilities Act Code of Conduct Regulation* audit for the 2007 audit year.⁵ The audit found that AUI had complied in all material respects with the Inter-Affiliate Code of Conduct and *Gas Utilities Act Code of Conduct Regulation*.

¹ [Bulletin 2010-25](#), *Gas Utilities Act Code of Conduct Regulation* AR 183/2001 process changes and clarification of requirements, September 17, 2010.

² Effective January 1, 2011, AltaGas Energy was wound up and all of its assets and liabilities were conveyed to its parent, AltaGas Ltd.

³ Application No. 1607107, Proceeding ID No. 1122

⁴ Application No. 1607108, Proceeding ID No. 1122

⁵ Regulatory Audit Report #2008-002, AltaGas Utilities Inc., Audit in Respect of Compliance with the Inter-Affiliate Code of Conduct and Gas Code of Conduct Regulation for the Year Ended December 31, 2007, September 12, 2008.

- b) AUI also states that for 2009 and 2010, it remedied all instances of non-compliance identified in its annual compliance report by the time the reports were filed. AUI was granted exemptions for the 2006⁶ and 2008⁷ audit years. In 2005,⁸ an audit performed by Ernst & Young found AUI to be in compliance in all material respects with the *Gas Utilities Act Code of Conduct Regulation*.
- c) AUI estimates that the audit would cost approximately \$66,000. Since audit costs are administered by way of a deferral account, an exemption would result in a substantial savings to its customers.

4 Views of the UCA

13. In its SIP, the UCA stated that it required further information before indicating whether it objected to or supported the application to defer the 2010 *Gas Utilities Act Code of Conduct Regulation* audit from 2011 to 2012. Based on Inter-Affiliate issues raised in both the 2007 and 2008/2009 General Rate Application (GRA) and subsequent changes in ownership, the UCA considers that it may be appropriate to conduct both the *Gas Utilities Act Code of Conduct Regulation* and Inter-Affiliate audits for the 2010 audit year. The UCA indicated it would like to explore these issues further before making a final determination of its position. Accordingly, the UCA requested that the Commission establish a process that allows for information requests, argument and reply argument.

5 Views of AUI

14. AUI's response to the concerns of the UCA reiterated that it is not requesting a deferral. Rather AUI is applying for an exemption from the requirement to conduct an audit for the 2010 audit year. AUI also submitted that the UCA's request for a process involving information requests, argument and reply argument is unnecessary. The concerns raised by the UCA are related to inter-affiliate issues and not *Gas Utilities Act Code of Conduct Regulation* related matters. AUI submits the AUI 2010-2012 GRA Phase 1 proceeding⁹ currently before the Commission should provide adequate opportunity for the UCA to explore inter-affiliate issues.

6 Views of the Commission

15. The Commission agrees with AUI that this application is for an exemption from the requirement to conduct an audit under the *Gas Utilities Act Code of Code Regulation*, and that matters relating to inter-affiliate issues should be addressed in AUI's 2010-2012 GRA Phase 1 proceeding.

⁶ Letter dated April 4, 2007 (Application No. 1506413).

⁷ Decision [2009-036](#): AltaGas Utilities Inc., Gas Code of Conduct Regulation Audit Exemption Request, Application No. 1604871, April 1, 2009.

⁸ Gas Utilities Act Code of Conduct Compliance Report dated June 30, 2006 (Application 1472939).

⁹ AltaGas Utilities Inc. 2010-2012 General Rate Phase 1, Application No. 1606694, Proceeding ID No. 904.

16. The Commission recognizes that AUI has been audited twice, once in 2005 by Ernst & Young for the four months ending December 31, 2005 and once in 2008 by AUC staff for the year ending December 31, 2007. The Commission notes that AUI has shown compliance with the *Gas Utilities Act Code of Code Regulation* in the two audits undertaken.
17. The Commission accepts AUI's statement that all self-reported non-compliance matters identified by AUI in its annual reports to the Commission had been remedied before the reports were filed and notes that this is in accordance with Section 33 of the Regulation.
18. The Commission is of the view that, since January 1, 2010, when AltaGas Energy and ECNG began to operate in AUI's service territory the risk of non-compliance with the *Gas Utilities Act Code of Conduct Regulation* has increased.
19. The Commission is also of the view that changes to AUI's ownership structure¹⁰ since its 2008-2009 GRA Phase 1 application may also contribute to an increase in risk of non-compliance with the *Gas Utilities Act Code of Conduct Regulation*.
20. The Commission accepts AUI's estimate that an audit would cost \$66,000 and its statement that an exemption would result in substantial savings to AUI's customers in 2011. The Commission notes that savings to AUI's customers resulted from the exemptions granted for 2006, 2008 and 2009 and by AUC staff undertaking the audit for 2007. The Commission considers that at this time the benefit of conducting an audit outweighs any further cost savings.
21. For the foregoing reasons, AUI's application for an exemption from the requirement to conduct a compliance audit for the 2010 audit year, pursuant to Section 41(1) (a) of the *Gas Utilities Act Code of Conduct Regulation*, AR 183/2003 is denied.
22. The Commission recommends that AUI explore the opportunity to reduce its audit costs by undertaking a joint audit with its affiliated retailers, AltaGas Energy and ECNG. The Commission would be willing to waive the requirement in Section 37 of the *Gas Utilities Act Code of Conduct Regulation*, for each gas distributor or default service provider and its affiliated retailer to each appoint an independent auditor, if AUI, AltaGas Energy and ECNG conclude a combined audit could achieve the purpose of the regulation on a cost effective basis.

7 Order

23. It is hereby ordered that:

AUI file an application requesting approval of its auditor and a work plan describing the audit, the review procedure to be used and the scope of the work by May 31, 2011, as required under sections 37 and 38 of the *Gas Utilities Act Code of Conduct Regulation*, AR 183/2003.

¹⁰ AltaGas Utilities Inc. 2010-2012 General Rate Application Phase 1 Application No. 1606694, Proceeding ID No. 904, page 5 of 343.

Dated on May 3, 2011.

The Alberta Utilities Commission

(original signed by)

Kay Holgate
Commission Member