



Canadian Utilities Limited

**Application for the Amalgamation of ATCO Energy Solutions Ltd.
and ATCO Alberta Storage Hub Ltd.**

December 13, 2021

Alberta Utilities Commission

Decision 27034-D01-2021

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Proceeding 27034

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Eau Claire Tower
1400, 600 Third Avenue S.W.
Calgary, Alberta T2P 0G5

Telephone: 310-4AUC (310-4282 in Alberta)
1-833-511-4AUC (1-833-511-4282 outside Alberta)

Email: info@auc.ab.ca

Website: www.auc.ab.ca

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Contents

1 Introduction..... 1

2 Background to the application process..... 2

3 Should the Commission approve the amalgamation of ATCO Energy Solutions Ltd. and ATCO Alberta Storage Hub Ltd. into AES Amalco? 2

4 Order..... 5

Appendix 1 – Proceeding participants 6

List of figures

Figure 1. Current versus post-amalgamation organizational structure of CU, in respect of the companies affected by the amalgamation..... 3

1 Introduction

1. Canadian Utilities Limited (CU) filed an application with the Alberta Utilities Commission, pursuant to Section 101(2)(d)(ii) of the *Public Utilities Act* and Section 26(2)(d)(ii) of the *Gas Utilities Act*, to amalgamate ATCO Energy Solutions Ltd. (AES) and ATCO Alberta Storage Hub Ltd. (ATCO Hub) as a transaction to merge or consolidate property outside the ordinary course of business (the amalgamation). Pursuant to the designation regulations,¹ CU is a designated owner of a public utility for the purposes of sections 101, 102 and 109 of the *Public Utilities Act* and a designated owner of a gas utility for the purposes of sections 26 and 27 of the *Gas Utilities Act*.² This means that Commission approval is required respecting CU's proposed amalgamation of AES and ATCO Hub. Following the Commission's approval under the *Public Utilities Act* and the *Gas Utilities Act*, CU stated that AES and ATCO Hub will amalgamate into, and continue as the corporation, ATCO Energy Solutions Ltd. (AES Amalco).

2. CU is incorporated under the *Canada Business Corporations Act* and controlled by ATCO Ltd. CU owns 100 per cent of AES.

3. AES owns and operates a variety of natural gas-related operations, including gas storage, industrial water infrastructure, natural gas gathering, processing, transportation and gas liquids services. AES is not a Commission-regulated utility or a designated owner of public utility under the designation regulations. AES is a direct, wholly owned subsidiary of CU.³

4. ATCO Hub was initially incorporated as a wholly owned subsidiary of AES, for the purpose of acquiring certain non-regulated gas storage assets. ATCO Hub later acquired two other entities, which amalgamated into and continued as ATCO Alberta Storage Hub Ltd. ATCO Hub remains a wholly owned subsidiary of AES.⁴

5. In its application, CU has requested orders approving:

- the amalgamation pursuant to Section 101(2)(d)(ii) of the *Public Utilities Act*;
- the amalgamation pursuant to Section 26(2)(d)(ii) of the *Gas Utilities Act*; and
- any further and other relief, exemptions or declarations of the Commission that are within its jurisdiction and are necessary to permit and facilitate the amalgamation.⁵

¹ *Public Utilities Designation Regulation and Gas Utilities Designation Regulation.*

² Exhibit 27034-X0001, application, paragraph 2.

³ Exhibit 27034-X0001, application, paragraph 5.

⁴ Exhibit 27034-X0001, application, paragraph 6.

⁵ Exhibit 27034-X0001, application, paragraph 4.

6. In this decision, the Commission approves the amalgamation under Section 101(2)(d)(ii) of the *Public Utilities Act* and Section 26(2)(d)(ii) of the *Gas Utilities Act* because the Commission's no-harm test has been satisfied. CU has demonstrated that there is no harm to customers in the proposed amalgamation.

2 Background to the application process

7. The Commission received CU's application on December 3, 2021.

8. The Commission issued notice of the application on December 6, 2021, which required parties to provide a statement of intent to participate by December 9, 2021.⁶ No statements of intent to participate were filed in response to the Commission's notice. The Commission considers the record of this proceeding to have closed on December 9, 2021.

9. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record of this proceeding. Accordingly, 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 that matter.

3 Should the Commission approve the amalgamation of ATCO Energy Solutions Ltd. and ATCO Alberta Storage Hub Ltd. into AES Amalco?

10. CU submitted that the amalgamation will be completed through the filing of corporate documents required to give effect to the amalgamation.⁷ Upon its completion, the property of each of AES and ATCO Hub shall continue to be the property of AES Amalco; AES Amalco shall continue to be liable for the obligations of each of AES and ATCO Hub; and AES Amalco will be a wholly owned subsidiary of CU.⁸ Simplified schematics of the current and post-amalgamation structure of CU, in respect of the structure of the companies affected by the amalgamation, are reproduced below:⁹

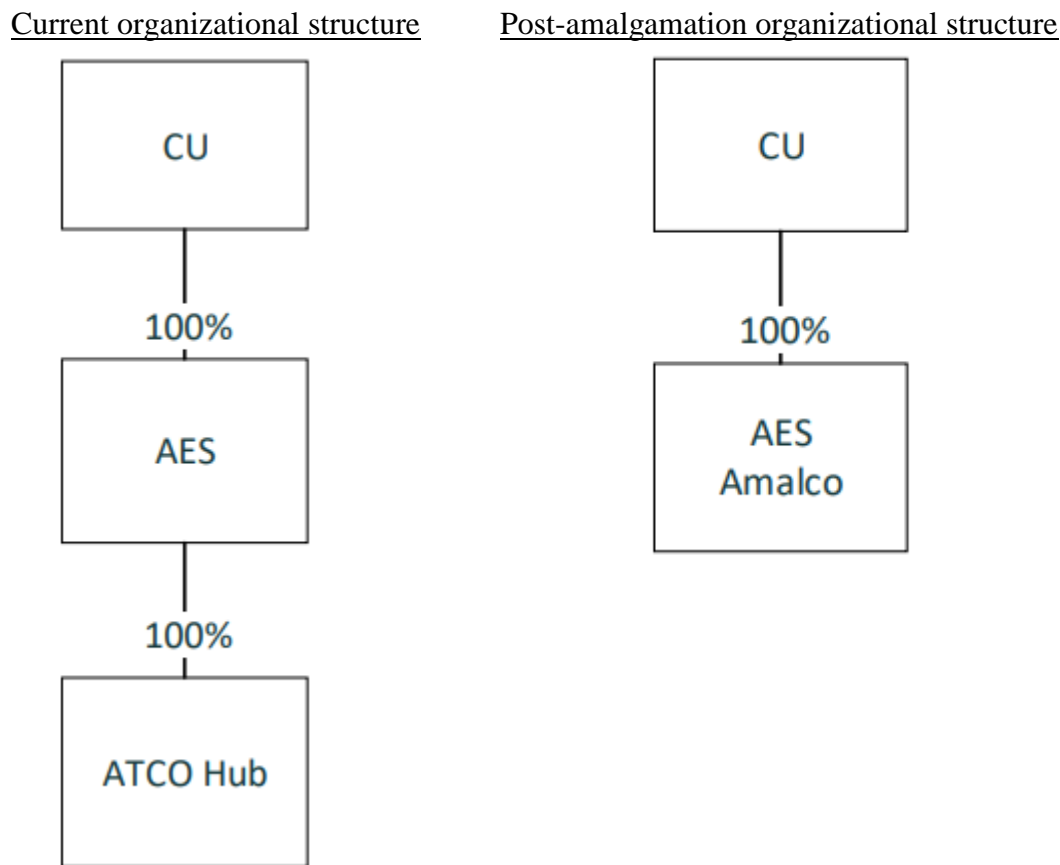
⁶ Exhibit 27034-X0004.

⁷ Exhibit 27034-X0001, application, paragraph 7.

⁸ Exhibit 27034-X0001, application, paragraph 3.

⁹ Exhibit 27034-X0001, application, PDF pages 5-6.

Figure 1. Current versus post-amalgamation organizational structure of CU, in respect of the companies affected by the amalgamation



11. Given that AES is an unregulated wholly owned subsidiary of CU and is amalgamating with ATCO Hub, its unregulated wholly owned subsidiary, CU submitted that the amalgamation will not adversely affect any member of the public of Alberta who is currently receiving service from the regulated ATCO utilities and will not result in any impacts to utility service or increase in utility rates. CU indicated that the requested approvals do not affect gas or public utility service, nor do they impact regulatory oversight of CU.¹⁰

12. As stated above, CU's proposed amalgamation is a merger or consolidation of property outside the ordinary course of business and accordingly requires the consent of the Commission pursuant to Section 101(2)(d) of the *Public Utilities Act* and Section 26(2)(d) of the *Gas Utilities Act*. The central question for the Commission in deciding whether to approve a transaction outside of the ordinary course of business under Section 101(2)(d) of the *Public Utilities Act* or Section 26(2)(d) of the *Gas Utilities Act* is whether customers are harmed by the amalgamation. The customers in this case are the consumers of electricity and natural gas utilities served by the regulated ATCO utilities. The Commission has traditionally applied a no-harm test which has been articulated as follows:

... that it should weigh the potential positive and negative impacts of the transactions to determine whether the balance favours customers or at least leaves them no worse off,

¹⁰ Exhibit 27034-X0001, application, paragraph 11.

having regard to all of the circumstances of the case. If so, then the Board [Alberta Energy and Utilities Board, predecessor to the Commission] considers that the transactions should be approved.¹¹

13. If harm is identified, some form of mitigation may be necessary in order for the transaction to proceed.

14. The no-harm test and the factors considered by the Commission have evolved over the years, and the test now reflects that customers are:

- to the maximum extent possible, to be protected against any negative ramifications arising from the transactions;
- not entitled to a level of post-transaction regulatory certainty they would not have realized if the transaction had not been approved; and
- at least no worse off after the transaction is completed after consideration of the potential positive and negative impacts of the proposed transaction.^{12 13 14}

15. In assessing the no-harm test, the Commission expressly relies on the representations of CU in its application with respect to the amalgamation.

16. Given that the amalgamation involves the vertical amalgamation of two existing non-regulated entities, AES and ATCO Hub, the Commission finds that the amalgamation is not expected to impact customers positively or negatively, and therefore, customers will be no worse off after it is completed. The Commission also finds that the amalgamation does not have potentially harmful operational effects on customers that may impair the integrity and reliability of the systems operated by the regulated ATCO utilities, and that the approval of CU's application for the amalgamation will not result in any financial harm to customers.

17. For the above reasons, the Commission finds that the requirements of the no-harm test have been satisfied and approves the amalgamation, as filed.

¹¹ Decision 2000-41: TransAlta Utilities Corporation, Sale of Distribution Business, Application 2000051, File 6404-3, July 5, 2000, page 8.

¹² 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, paragraph 108.

¹³ Decision 2011-374 (Errata): AltaLink Investment Management Ltd. et al., Application Related to Change in Ownership, Proceeding 1197, Applications 1607248-1 and 1607249-1, September 26, 2011, paragraph 49; Decision 2006-056: AltaLink Investment Management Ltd. and AltaLink Management Ltd., Macquarie Transmission Alberta Ltd., SNC-Lavalin Transmission Ltd. OTPPB TEP Inc., 3057246 Nova Scotia Company, SNC-Lavalin Energy Alberta Ltd. and TE-TAU, Inc., Application for a Change in Ownership, Application 1434687-1, June 13, 2006, page 5.

¹⁴ Decision 2011-374 (Errata), paragraph 50; Decision 2006-056, pages 5-6.

4 Order

18. It is hereby ordered that:

- (1) The Commission approves Canadian Utilities Limited's application, under Section 101(2)(d)(ii) of the *Public Utilities Act* and Section 26(2)(d)(ii) of the *Gas Utilities Act*, to amalgamate ATCO Energy Solutions Ltd. and ATCO Alberta Storage Hub Ltd., in the manner set out in the application.

Dated on December 13, 2021.

Alberta Utilities Commission

(original signed by)

Neil Jamieson
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
Canadian Utilities Limited (CU) Bennett Jones LLP

Alberta Utilities Commission
Commission panel N. Jamieson, Commission Member
Commission staff A. Sabo (Commission counsel) F. Alonso L. Bondad