



Canadian Utilities Limited

**Application for the Amalgamation of ATCO Power
(2010) Ltd., Barlow Solar Park Ltd. and Deerfoot
Solar Park Ltd.**

December 22, 2022

Alberta Utilities Commission

Decision 27872-D01-2022

Canadian Utilities Limited

Application for the Amalgamation of ATCO Power (2010) Ltd., Barlow Solar Park Ltd. and Deerfoot Solar Park Ltd.

Proceeding 27872

December 22, 2022

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Contents

1	Decision summary	1
2	Background	1
3	The request for an order to amalgamate ATCO Power 2010, Barlow and Deerfoot....	2
4	Order	5
	Appendix 1 – Proceeding participants	6

List of figures

Figure 1.	Current versus post-amalgamation organizational structure of Canadian Utilities Limited, in respect of the companies affected by the amalgamation	3
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Canadian Utilities Limited
Application for the Amalgamation of ATCO Power (2010) Ltd., Decision 27872-D01-2022
Barlow Solar Park Ltd. and Deerfoot Solar Park Ltd. Proceeding 27872

1 Decision summary

1. In this decision, the Alberta Utilities Commission approves an application to amalgamate ATCO Power (2010) Ltd. (ATCO Power 2010 or AP2010), Barlow Solar Park Ltd. (Barlow) and Deerfoot Solar Park Ltd. (Deerfoot). The Commission finds that the standard test for an application of this nature, the no-harm test, has been satisfied and the proposed amalgamation is approved.

2 Background

2. On December 14, 2022, Canadian Utilities Limited, ATCO Power 2010, Barlow and Deerfoot (the applicants) filed an application with the Commission for approval to amalgamate ATCO Power 2010, Barlow and Deerfoot, pursuant to sections 101, 102 and 109 of the *Public Utilities Act*, sections 26 and 27 of the *Gas Utilities Act* and the associated designation regulations.¹ The Commission issued notice of the application on December 15, 2022, and advised any interested party to register a statement of intent to participate (SIP) by December 20, 2022. No SIPs were filed.

3. Canadian Utilities Limited also applied to amend prior approvals regarding the name of the party for whom the approval had been issued, namely, Power Plant Approval 27766-D02-2022,² Connection Order 27702-D03-2022,³ Power Plant Approval 27712-D02-2022⁴ and Connection Order 27712-D03-2022⁵ in the application; however, on December 21, 2022, it withdrew that aspect of the application.⁶

4. Through a short-form vertical amalgamation, ATCO Power 2010 will amalgamate with each of Barlow and Deerfoot, and afterwards will continue as ATCO Power (2010) Ltd., which was described in the application as ATCO Power 2010 Amalco or AP2010 Amalco.

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

² Power Plant Approval 27766-D02-2022, Power Plant Approval 27766-D02-2022, Proceeding 27766, Application 27766-A001, November 28, 2022.

³ Connection Order 27702-D03-2022, Appendix 2 to Decision 27702-D01-2022, Barlow Solar Park Ltd., Connect Barlow Solar Park Power Plant to ENMAX Power Corporation's, Distribution System, Proceeding 27702, Application 27702-A001, November 1, 2022.

⁴ Power Plant Approval 27712-D02-2022, Appendix 1 to Decision 27712-D01-2022, Deerfoot Solar Park Ltd., Approval Transfer of Deerfoot Solar Power Plant, Proceeding 27712, Application 27712-A001, November 2, 2022.

⁵ Connection Order 27712-D03-2022, Appendix 2 to Decision 27712-D01-2022, Deerfoot Solar Park Ltd., Connect Deerfoot Solar Project to ENMAX Power Corporation's Distribution System, Proceeding 27712, Application 27712-A001, November 2, 2022.

⁶ Exhibit 27872-X0006, Canadian Utilities Letter, December 21, 2022.

5. Currently, ATCO Power 2010 is a direct, wholly owned subsidiary of Canadian Utilities Limited and each of Barlow and Deerfoot are direct, wholly owned subsidiaries of ATCO Power 2010. Upon completion of the amalgamation:

- (i) The property of each of ATCO Power 2010, Barlow, and Deerfoot, including the AUC Power Plant Approvals and Connection Orders held by Barlow and Deerfoot, shall be the property of ATCO Power 2010 Amalco.
- (ii) ATCO Power 2010 Amalco shall continue to be liable for the obligations of each of ATCO Power 2010, Barlow, and Deerfoot.
- (iii) ATCO Power 2010 Amalco will be a direct, wholly owned subsidiary of Canadian Utilities Limited.⁷

6. Canadian Utilities Limited is designated both as an owner of a public utility to which Section 102 of the *Public Utilities Act* applies and as an owner of a gas utility to which Section 26 of the *Gas Utilities Act* applies. Both provisions require Canadian Utilities Limited to obtain Commission approval to merge or consolidate its property outside the ordinary course of its business. Commission approval is required to proceed with the proposed amalgamation of ATCO Power 2010, Barlow and Deerfoot unless the amalgamation is in the ordinary course of business.

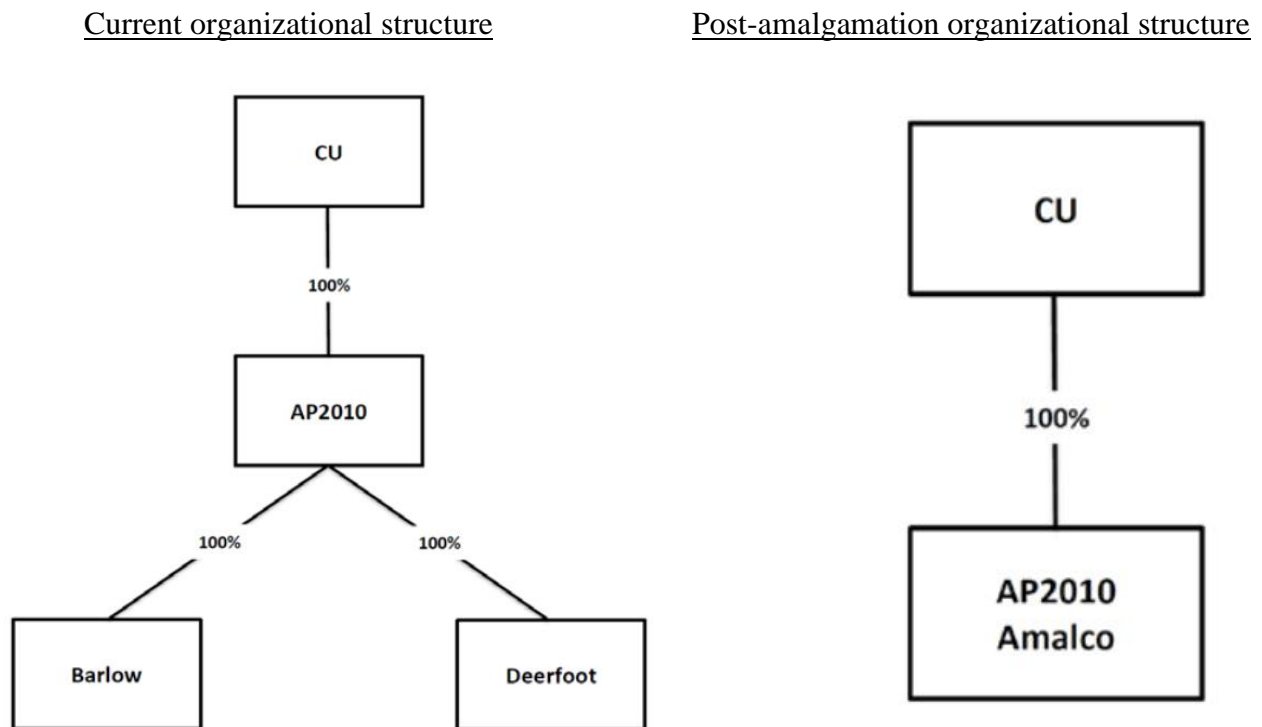
7. The applicants requested Commission orders approving the amalgamation under Section 101(2)(d)(ii) of the *Public Utilities Act* and Section 26(2)(d)(ii) of the *Gas Utilities Act*, with an effective date of no later than January 1, 2023. The applicants submitted that the amalgamation is a transaction outside the ordinary course of business.

3 The request for an order to amalgamate ATCO Power 2010, Barlow and Deerfoot

8. As noted above, upon completion of the amalgamation, ATCO Power 2010 Amalco will be a direct, wholly owned subsidiary of Canadian Utilities Limited, and will be governed under the *Alberta Business Corporations Act*. For convenience, schematics of the current and post-amalgamation corporate structure of the corporations affected by the amalgamation are set out in Figure 1:

⁷ Exhibit 27872-X0001, application, paragraph 3.

Figure 1. Current versus post-amalgamation organizational structure of Canadian Utilities Limited, in respect of the companies affected by the amalgamation⁸



9. Given that ATCO Power 2010 is an unregulated, wholly owned subsidiary of Canadian Utilities Limited, the applicants submitted that the amalgamation will not adversely affect any member of the public of Alberta who is currently receiving service from the regulated ATCO utilities⁹ and will not result in any impacts to utility service or increase in utility rates.¹⁰

10. The Commission accepts the applicants' submission that the 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*.

11. The central question for the Commission in deciding whether to approve a transaction outside of the ordinary course of business is whether customers would be harmed by the transaction. The customers in this case are the consumers of electricity and natural gas utilities served by the ATCO utilities, which are regulated by the Commission. The Commission has traditionally applied a no-harm test in such applications, 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, having regard to all of the circumstances of the case. If so, then the Board [Alberta

⁸ Exhibit 27872-X0001, application, Appendix A, PDF pages 6 and 7.

⁹ Canadian Utilities Limited is the parent corporation of CU Inc. CU Inc. is the parent corporation of ATCO Gas and Pipelines Ltd. and ATCO Electric Ltd., both of which are ATCO utilities regulated by the Commission.

¹⁰ Exhibit 27872-X0001, application, paragraph 10.

Energy and Utilities Board, predecessor to the Commission] considers that the transactions should be approved.¹¹

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

13. 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}

14. In assessing the no-harm test, the Commission relies on the representations of the applicants regarding the amalgamation.

15. Given that the amalgamation involves the vertical amalgamation of three existing non-regulated entities, ATCO Power 2010, and its subsidiaries Barlow and Deerfoot, the Commission finds that the amalgamation is not expected to impact customers either positively or negatively, and therefore, customers will be no worse off after it is completed. The Commission 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 the application for the amalgamation will not result in any financial harm to customers.

16. 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

17. It is hereby ordered that:

- (1) The Commission approves the amalgamation of ATCO Power (2010) Ltd., Barlow Solar Park Ltd. and Deerfoot Solar Park Ltd., as filed.

Dated on December 22, 2022.

Alberta Utilities Commission

(original signed by)

Carolyn Dahl Rees
Chair

Appendix 1 – Proceeding participants

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

Alberta Utilities Commission
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Commission staff A. Sabo (Commission counsel) B. Edwards