



## **Canadian Utilities Limited**

**Corporate Reorganization Under Section 101 of the  
Public Utilities Act and Section 26 of the Gas Utilities Act**

**April 27, 2023**

**Alberta Utilities Commission**

Decision 28137-D01-2023

Canadian Utilities Limited

Corporate Reorganization Under Section 101 of the Public Utilities Act and Section 26 of the Gas Utilities Act

Proceeding 28137

April 27, 2023

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The Commission may, no later than 60 days from the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

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## **1 Decision summary**

1. In this decision, the Alberta Utilities Commission approves an application filed by Canadian Utilities Limited (CUL) with respect to a proposed internal reorganization of certain CUL subsidiaries.

## **2 Background**

2. On March 31, 2023, CUL filed an application with the Commission for approval of a proposed internal reorganization under Section 101(2)(d) of the *Public Utilities Act* and Section 26(2)(d) of the *Gas Utilities Act*. The proposed internal reorganization involves certain CUL subsidiaries, as discussed in further detail below. Initially, CUL also proposed streamlining the Commission's oversight role under the *Public Utilities Act* and *Gas Utilities Act* for similar transactions going forward, but ultimately withdrew these requests in the context of this proceeding.

3. CUL is a designated owner of a public utility for the purposes of Section 101 of the *Public Utilities Act*. It is also a designated owner of a gas utility for the purposes of Section 26 of the *Gas Utilities Act*. Under Section 101(2)(d)(i) of the *Public Utilities Act* and Section 26(2)(d)(i) of the *Gas Utilities Act*, Commission approval is required for CUL to sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part of them, outside the ordinary course of its business.

4. CUL provided the following summary of the proposed reorganization:

- ATCO Power (Energy) Holdings Ltd. (APEHL), a direct and wholly owned subsidiary of CUL, will transfer all of the shares of ATCO Power Australia Finance Pty Ltd. (APAF) to ATCO Australia Pty Ltd. (AAPL), another direct and wholly owned subsidiary of CUL;
- AAPL, in exchange for the APAF shares transferred from APEHL, will issue preferred shares of AAPL to APEHL; and
- APEHL will transfer the preferred shares of AAPL to CUL as a return of capital on the shares of APEHL held by CUL.

Steps 1 through 3 are collectively referred to herein as the "Australia Transaction."

5. A diagram showing the current and future ownership structure for the ATCO Australia Group is set out in [Appendix 2](#) to this decision.

6. Initially, CUL presented three options for the Commission’s consideration:
  - (i) Determine that Section 101(2) of the *Public Utilities Act* and Section 26(2) of the *Gas Utilities Act* do not extend to transactions which occur between non-designated subsidiaries of a designated owner of a utility and that the language in these provisions applies only to actions undertaken by the designated owner of the utility.
  - (ii) Approve the Australia Transaction on the basis that no harm to Alberta ratepayers will arise.
  - (iii) Declare that Section 101(2) of the *Public Utilities Act* and Section 26(2) of the *Gas Utilities Act* do not apply to the Australia Transaction or, more generally, to a class of transactions that involve only non-designated subsidiaries of a designated owner of a utility.
7. On April 3, 2023, the Commission issued notice of the application. On April 11, 2023, The City of Calgary filed a statement of intent to participate (SIP) that highlighted legal and policy implications related to CUL’s request for “declaratory, interpretational and exemptive relief” that would apply to future cases where the facts are not before the Commission in this proceeding (i.e., CUL’s options 1 and 3 summarized above).<sup>1</sup> Calgary indicated that a discovery process was required to understand the intent and effect of the requested relief.
8. On April 20, 2023, CUL withdrew its request for consideration of the first and third options and requested that the Commission grant approval of the Australia Transaction on an expedited basis.<sup>2</sup> CUL also requested that the Commission, on its own initiative and through a separate process, further explore the alternative forms of relief contemplated in the original application as the Commission is empowered to do under sections 26(4) of the *Gas Utilities Act* and 101(4) of the *Public Utilities Act*.
9. The Commission considers that the record of this proceeding closed on April 20, 2023.

### **3 CUL’s request pursuant to Section 101(2) of the Public Utilities Act and Section 26(2) of the Gas Utilities Act**

#### **3.1 Amended request**

10. The Commission finds that no further process is required in relation to CUL’s request for approval of the Australia Transaction. The other options initially proposed by CUL (options 1 and 3 above) will not be considered in this proceeding, following CUL’s request to withdraw them. For the same reason, and in light of the fact that the issues raised by Calgary in its SIP were specific to the relief that is no longer being requested in this proceeding, the further discovery requested by Calgary is not required.

11. The Commission is continually looking for opportunities to improve its approach to regulation, including ensuring that participants are not subjected to unnecessary or disproportionate regulatory burden. The Commission acknowledges CUL’s request to consider

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<sup>1</sup> Exhibit 28137-X0005.

<sup>2</sup> Exhibit 28137-X0006.

opportunities to streamline or clarify approvals required of designated owners of utilities, as well as Calgary's identification that there are legal and policy implications arising from this. The Commission is not prepared to initiate a proceeding to consider these issues at this time, but it may explore an opportunity to do so in the future. Should it do so, the Commission expects to seek some form of feedback from the broader group of stakeholders (including, but not limited to, CUL and Calgary) that would be interested in such a proceeding.

### 3.2 Application of the no-harm test to the Australia Transaction

12. For the purposes of this application, the Commission accepts CUL's submission that a broad and expansive reading of Section 101(2) of the *Public Utilities Act* and Section 26(2) of the *Gas Utilities Act* could suggest that the Australia Transaction requires approval from the Commission. The Commission has, accordingly, proceeded to consider whether or not to approve the Australia Transaction on an expedited basis as requested. The Commission has not engaged in the exercise of determining whether there are classes of transactions whereby these sections do not (or should not) apply.

13. The Commission applies a "no-harm test" to assess whether to approve a disposition that is outside the ordinary course of business under Section 101(2)(d) of the *Public Utilities Act* and Section 26(2)(d) of the *Gas Utilities Act*. The no-harm test requires the Commission to examine the Australia Transaction in the context of both potential financial and service level effects to customers and in terms of whether or not it will adversely affect rates or the quantity or quality of service, among other things.<sup>3</sup> Under the no-harm test, the Commission weighs the potential positive and negative impacts of the transaction 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 the Commission determines there is no harm to customers, it would approve the disposition.

14. In applying the no-harm test, the Commission expressly relies on the representations of CUL in its application.

15. The Commission finds that there will be no harm to customers if the Australia Transaction is approved. Specifically, the Australia Transaction:

- involves subsidiaries of CUL that do not provide utility service in Alberta and are not regulated by the AUC;
- does not have any effect on CUL's direct or indirect ownership interests; and
- will not harm customers of the regulated ATCO Utilities (ATCO Electric Ltd. and ATCO Gas and Pipelines Ltd.) in that it will not impact the rates Alberta utility customers are required to pay nor the quality of service they receive.

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

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<sup>3</sup> Decision 20329-D01-2015: ATCO Electric Ltd., Disposition of Land and Buildings Located in Grande Prairie and Lloydminster, Proceeding 20329, September 16, 2015, paragraphs 66-70.

17. The Commission notes that this is the third application of a similar type received from CUL in less than six months.<sup>4</sup> In each case, CUL has requested a decision from the Commission in an abbreviated time frame ranging from nine to 19 days from the filing of the application. The Commission has achieved these timelines except in this case, because of the expanded request for relief made in the application and Calgary's intervention in respect of that relief.

18. The Commission reminds CUL of the Commission's performance standards. For a rates proceeding in which notice of the application is issued and no further process is required, the current performance standard provides that the Commission will issue its decision in no more than 46 to 69 days after the application has been filed.<sup>5</sup> While the Commission strives to process applications in a timely fashion, the ability of the Commission to meet the abbreviated timelines requested by CUL will depend on the Commission's resource levels and workload at the time of the request, and in any event, cannot be guaranteed. This is particularly the case because these types of applications have generally been made without advance notice to the Commission. CUL may wish to file any similar such applications earlier (and preferably, having considered the Commission's performance standards) to ensure that any required approvals are obtained in accordance with the timelines CUL requires. CUL may also wish to consider giving the Commission as much advance notice as possible that it intends to make an application.

#### 4 Order

19. It is hereby ordered that:

- (1) Pursuant to Section 101(2)(d) of the *Public Utilities Act* and Section 26(2)(d) of the *Gas Utilities Act*, Canadian Utilities Limited's reorganization of the ATCO Australia Group is approved.

Dated on April 27, 2023.

#### Alberta Utilities Commission

(original signed by)

Kristi Sebalj  
Vice-Chair

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<sup>4</sup> CUL filed an application on December 14, 2022, requesting approval of an amalgamation by December 23, 2022, and the Commission approved this application in 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. CUL filed a further application on February 21, 2023, requesting approval of a transfer by March 14, 2023, and the Commission approved the application in Decision 28034-D01-2023: Canadian Utilities Limited, Transfer of Deerfoot Solar Project and Barlow Solar Project from ATCO Power (2010) Ltd. to Deerfoot Barlow Solar Limited Partnership, Proceeding 28034, March 14, 2023. In the present proceeding, CUL initially filed its application on March 31, 2023, requesting approval by April 19, 2023.

<sup>5</sup> Bulletin 2015-09, Performance standards for processing rate-related applications, March 26, 2015.

## Appendix 1 – Proceeding participants

<b>Name of organization (abbreviation) Company name of counsel or representative</b>
Canadian Utilities Limited (CUL) Bennett Jones LLP
The City of Calgary (Calgary) McLennan Ross Barristers & Solicitors

Alberta Utilities Commission
Commission panel K. Sebalj, Vice-Chair
Commission staff P. Khan (Commission counsel) E. Davis M. McJannet



## Appendix 2 – Australia Transaction

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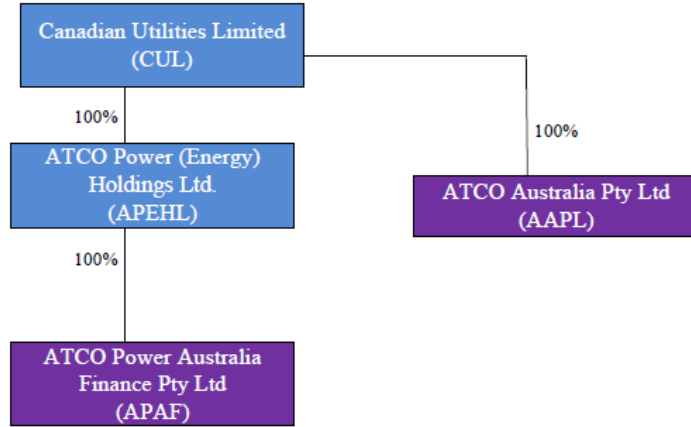


Appendix 2 -  
Australia Transaction  
(consists of 1 page)

## APPENDIX "A"

### Corporate Structure Diagrams

Before Australia  
Transaction



Upon completion of the Australia Transaction

