



**AltaLink Management Ltd.**

**Application for 2023 Debt Issuance**

**August 25, 2023**



**Alberta Utilities Commission**

Decision 28322-D01-2023

AltaLink Management Ltd.

Application for 2023 Debt Issuance

Proceeding 28322

August 25, 2023

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## Contents

<b>1</b>	<b>Decision summary</b> .....	<b>1</b>
<b>2</b>	<b>Introduction and background on the application process</b> .....	<b>1</b>
<b>3</b>	<b>Regulatory framework</b> .....	<b>2</b>
<b>4</b>	<b>Should the Commission approve AML’s application for debt financing?</b> .....	<b>3</b>
<b>5</b>	<b>Order</b> .....	<b>7</b>
	<b>Appendix 1 – Proceeding participants</b> .....	<b>9</b>
	<b>Appendix 2 – Summary of Commission directions</b> .....	<b>10</b>

## **1 Decision summary**

1. In this decision, the Alberta Utilities Commission considers whether to approve the application of AltaLink Management Ltd. (AML), in its capacity as general partner of AltaLink, L.P. (ALP), a limited partnership, to cause ALP to make one or more issues of senior secured notes or other debt securities in the aggregate principal amount of up to C\$500 million on or prior to December 31, 2023, and to pledge assets as security to such issuances. For the reasons stated below, the Commission approves AML's 2023 debt issuance application.

## **2 Introduction and background on the application process**

2. On July 7, 2023, AML, in its capacity as general partner of ALP, filed a debt issuance application with the Commission requesting the following orders from the Commission:

- an order of the Commission pursuant to Section 101(2)(a)(ii) of the *Public Utilities Act*:
  - authorizing AML to cause ALP to make one or more issues on or prior to December 31, 2023, of up to C\$500 million aggregate principal amount of senior secured notes or other debt securities created and issued under the Master Trust Indenture, having a preferred term to maturity of 32 years or, alternatively, a term to maturity of two, three, five, seven, 10, 30, 31 or 40 years, as AML may determine to be appropriate having regard to capital market conditions and other relevant considerations at the time of issuance (Debt Securities);
  - approving the issuances of such Debt Securities as having been made in accordance with law; and
  - approving the purposes of such Debt Securities.
- an order of the Commission pursuant to Section 101(2)(d)(i) of the *Public Utilities Act*, authorizing AML to cause ALP. to grant security to lenders in respect of the Debt Securities, in the form of a first floating charge over the present and future property, assets and undertakings of AML, as legal owner, and ALP, as beneficial owner; and
- such further and other relief as the Commission may deem just.<sup>1</sup>

3. AML is a designated owner of a public utility under the *Public Utilities Designation Regulation*<sup>2</sup> and is subject to Section 101 of the *Public Utilities Act*, under which:

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<sup>1</sup> Exhibit 28322-X0002, application, paragraph 1.

<sup>2</sup> Section 1(1)(d).

- AML may not cause ALP to issue bonds or other evidence of indebtedness, payable in more than one year from the date of their issuance, without the approval of the Commission; and
  - AML, as legal owner, and ALP, as beneficial owner, may not sell, lease, mortgage or otherwise dispose of or encumber their respective interests in their property, franchises, privileges or rights, or any parts of them, without Commission approval.
4. The Commission issued notice of the application on July 11, 2023, which required interested parties to submit, within one week, a statement of intent to participate (SIP). No SIPs were filed.
5. The Commission issued a process letter with one round of information requests (IRs) to AML on July 26, 2023. IR responses were provided by AML on August 2, 2023.
6. The Commission considers the record of this proceeding to have closed on August 2, 2023. The Commission reviewed the entire record in coming to this decision; lack of reference to a matter addressed in evidence does not mean that it was not considered. For the reasons stated in Section 4 of this decision, the Commission approves AML's application as filed.

### 3 Regulatory framework

7. In Decision 21555-D01-2016,<sup>3</sup> the Commission approved Rule 031,<sup>4</sup> which provides guidance on the application of a conditional exemption from the requirement to seek advance Commission approval for issuances of equities and long-term debt, and an exemption from certain operational reporting requirements.

8. Section 3 of Rule 031 exempts securities transactions from advance Commission approval if certain criteria are met, including a requirement that the issuance does not require utility assets to be pledged as security.<sup>5</sup> Section 3.4 of Rule 031 states:

If an issuance does not qualify for exemption under this rule, the designated owner must seek advance Commission approval for the issuance by way of a formal application filed in accordance with Rule 001: *Rules of Practice*.

9. Accordingly, should the debt or equity issuance not qualify for the exemption under Rule 031, the designated owner must seek approval of its securities transaction pursuant to Section 101(2) of the *Public Utilities Act*, which states:

101(2) No owner of a public utility designated under subsection (1) shall

- (a) issue any
  - (i) of its shares or stock, or

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<sup>3</sup> Decision 21555-D01-2016: Conditional Exemption from Specific Financing and Reporting Requirements, Proceeding 21555, December 6, 2016.

<sup>4</sup> Rule 031: *Conditional Exemption from Specific Financing and Reporting Requirements*.

<sup>5</sup> Rule 031, Section 3.1(c); see also Section 3.2(b).

- (ii) bonds or other evidences of indebtedness, payable in more than one year from the date of them,

unless it has first satisfied the Commission that the proposed issue is to be made in accordance with law and has obtained the approval of the Commission for the purposes of the issue and an order of the Commission authorizing the issue,

...

- (d) without the approval of the Commission,

- (i) sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part of them, or
- (ii) merge or consolidate its property, franchises, privileges or rights, or any part of them,

and a sale, lease, mortgage, disposition, encumbrance, merger or consolidation made in contravention of this clause is void, but nothing in this clause shall be construed to prevent in any way the sale, lease, mortgage, disposition, encumbrance, merger or consolidation of any of the property of an owner of a public utility designated under subsection (1) in the ordinary course of the owner's business.

10. AML's proposed Debt Securities issuance will be secured by the assets of AML as legal owner and ALP as beneficial owner. As a result, AML and ALP do not qualify for an exemption under Section 3 of Rule 031 because the requirement under Section 3.1(c) – "the issuance does not require utility assets to be pledged as security" – is not met. Accordingly, AML must seek approval of the Commission to cause ALP to issue the Debt Securities, pursuant to Section 101(2) of the *Public Utilities Act*.

#### **4 Should the Commission approve AML's application for debt financing?**

11. AML submitted that proceeds from the issue and sale of the Debt Securities are to be used for a number of purposes, including:

- to facilitate the repayment or refinancing, in whole or in part, of indebtedness in connection with outstanding medium-term notes or other bonds, including without limitation the outstanding Series 2013-4 Notes, or outstanding commercial paper;
- to fund, directly or indirectly, the growth and expansion of AML's electricity transmission network in Alberta, in respect of ongoing operations;
- to fund any reserve fund, account or other fund established pursuant to the Master Trust Indenture and any applicable series supplement; and
- general corporate purposes.<sup>6</sup>

12. AML, along with its financial advisors, developed a financing structure referred to as the "Capital Markets Platform." The Capital Markets Platform is capable of accommodating a

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<sup>6</sup> Exhibit 28322-X0002, application, paragraphs 15-16.

variety of debt instruments and borrowings, including term bank debt, revolving bank lines of credit, publicly issued and privately placed term-debt securities (senior and subordinated), banker's acceptances, commercial paper and medium-term notes, interest-rate and currency swaps, and other hedging instruments. The terms and conditions of the Capital Markets Platform were included in the Master Trust Indenture between ALP, AML, and BNY Trust Company of Canada as trustee, amended and restated as of April 28, 2003.<sup>7</sup> A copy of the Master Trust Indenture is included in Appendix B<sup>8</sup> of the application.

13. AML submitted that the debt issuance will be made on a private placement basis, relying on available exemptions from prospectus requirements for such distributions (a Note Private Placement). AML explained that the Debt Securities issued and sold under a Note Private Placement are to be distributed through a person or company registered as an "investment dealer" within the meaning under National Instrument 31-103 – *Registration Requirements Exemptions and Ongoing Registrant Obligations* of the Canadian Securities Administrators (Dealer). AML noted that ALP will appoint a syndicate of Dealers in connection with the debt issuance.<sup>9</sup>

14. AML advised it will cause ALP and the Dealers, in connection with the debt issuance, to prepare and deliver to prospective buyers of the Debt Securities, an "Accredited Investor Term Sheet," which is intended to be in the same form as the "Preliminary Accredited Investor Term Sheet," included in Appendix C<sup>10</sup> of the application. AML explained that the Accredited Investor Term Sheet would contain updates, additional information or disclosure, revisions, modifications or other changes as AML, ALP and applicable Dealers consider necessary, and it would also be delivered to applicable securities regulatory authorities to the extent required. AML undertook to file with the Commission any Accredited Investor Term Sheet prepared in connection with any distribution of the Debt Securities, to be completed on or prior to December 31, 2023.<sup>11</sup>

15. AML submitted that it will determine the amount, issuance date and term of each issue of the Debt Securities having regard to various factors, including but not limited to the actual amount of ALP debt outstanding at the time, prevailing capital market conditions and the relative pricing of various maturities.<sup>12</sup> AML indicated that the 32-year term senior secured notes or other debt securities might be substituted for two-, three-, five-, seven-, 10-, 30-, 31- or 40-year term senior secured notes or other debt securities. Therefore, AML requested that in approving the issue and sale of the Debt Securities on the basis contemplated in paragraphs 1(a)(i) and 21(a)(i) of the application, the Commission approve the substitution of any or all of the 32-year term Debt Securities with two-, three-, five-, seven-, 10-, 30-, 31- or 40-year term Debt Securities.<sup>13</sup>

16. AML submitted that it expects to maintain its current credit ratings with both DBRS Limited and Standard & Poor's Global Ratings, Inc. (S&P). A copy of DBRS' Rating Report dated August 5, 2022,<sup>14</sup> confirmed an A rating with a stable trend for ALP and an A rating with a

<sup>7</sup> Exhibit 28322-X0002, application, paragraphs 3-4.

<sup>8</sup> Exhibit 28322-X0002, application, Appendix B, PDF page 9.

<sup>9</sup> Exhibit 28322-X0002, application, paragraph 5.

<sup>10</sup> Exhibit 28322-X0002, application, Appendix C, PDF page 106.

<sup>11</sup> Exhibit 28322-X0002, application, paragraph 6.

<sup>12</sup> Indicative terms of issue for 32-year Debt Securities are set out in Exhibit 28322-X0002, application, Appendix A, PDF page 8.

<sup>13</sup> Exhibit 28322-X0002, application, paragraphs 1, 19-20.

<sup>14</sup> Exhibit 28322-X0002, application, Appendix D, PDF page 119.

stable trend for ALP's senior secured notes and medium-term notes.<sup>15</sup> A copy of S&P's Ratings Report dated April 5, 2023,<sup>16</sup> confirmed an A rating with a stable trend for ALP and an A rating with a stable trend for ALP's senior secured notes and medium-term notes.

17. On June 23, 2023, AML was placed on a negative outlook by S&P. AML was advised but not consulted.<sup>17</sup> A copy of the revised S&P Rating Report confirmed an A rating with a negative outlook for ALP and an A rating on ALP's senior secured notes and medium-term notes. S&P revised its outlook on ALP from stable to negative, reflecting a negative outlook on ALP's parent, AltaLink Investments L.P. (AILP), and AILP's parent, Berkshire Hathaway Energy Co. (BHE).<sup>18</sup> The negative outlook reflects the potential that BHE's business risk could increase, or its financial measures could weaken, if it faces significantly greater wildfire liabilities related to PacifiCorp in the United States.

18. AML confirmed that due to S&P's group rating methodology, BHE ownership results in a higher credit rating for both AML and AILP under the BHE family of companies. AML also confirmed that it does not currently or in the foreseeable future expect to obtain debt financing from either of its U.S.<sup>19</sup> or Canadian<sup>20</sup> parents. AML does not expect the rating action by S&P to negatively impact its ability to raise debt. The Bank of Montreal canvassed 12 of AML's debtholders who cited that AML was a stable credit, and nothing had fundamentally changed at AML. AML confirmed that S&P's negative outlook has no impact on its credit metrics, or the cost of other debt recovered through AML's revenue requirement, as nothing has changed or is expected to change that would impact its credit metrics, revenue requirement or cost of debt as proposed in this application.<sup>21</sup>

19. AML stated that the requested orders within the application would not bind, affect or prejudice the Commission in consideration of any matter or question relating to the cost of capital associated with the Debt Securities.<sup>22</sup>

20. AML submitted that the proposed debt issuance will be made in accordance with law as required by Section 101(2)(a)(ii) of the *Public Utilities Act*, and included a legal opinion from Borden Ladner Gervais LLP to this effect.<sup>23</sup>

21. Section 101(2)(a)(ii) of the *Public Utilities Act* requires that the Commission determine (i) whether the proposed issuance is to be made in accordance with law; and (ii) whether the Commission is satisfied regarding the purposes of the proposed debt issuance described in the application.

22. In ascertaining whether a proposed issuance of debt will be made in accordance with applicable laws, the Commission focuses primarily on whether the proposed issuance meets the corporate and securities law requirements applicable to such transactions. The Commission typically requests, and relies upon, the opinion of the applicant's legal counsel to confirm that

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<sup>15</sup> Exhibit 28322-X0002, application, paragraphs 9-10.

<sup>16</sup> Exhibit 28322-X0002, application, Appendix E, PDF page 134.

<sup>17</sup> Exhibit 28322-X0009, AML-AUC-2023JUL26-002(a), PDF page 4.

<sup>18</sup> Exhibit 28322-X0002, application, Appendix F, PDF pages 144-145.

<sup>19</sup> AML's U.S. parent is Berkshire Hathaway Energy Company.

<sup>20</sup> AML's Canadian parent is BHE Canada Holdings Corporation.

<sup>21</sup> Exhibit 28322-X0009, AML-AUC-2023JUL26-002(a)-(d), PDF pages 4- 5.

<sup>22</sup> Exhibit 28322-X0002, application, paragraph 18.

<sup>23</sup> Exhibit 28322-X0002, application, Appendix G, PDF page 150.



the utility is duly authorized by its directors to undertake the issuance of the proposed securities, and that the form and content of the securities issuance is in compliance with applicable laws. Based on the opinion provided by AML's legal counsel, Borden Ladner Gervais LLP, dated July 7, 2023, the Commission is satisfied that due diligence is being exercised and steps have been taken to ensure that the issuance will be made in accordance with law.

23. The Commission is also satisfied with the level of detail provided in the application to support the purposes of the issuance and accepts AML's submitted purposes of the Debt Securities issuance.

24. Section 101(2)(d)(i) of the *Public Utilities Act* requires AML to receive approval from the Commission to encumber its property, franchises, privileges or rights, or any part of them. As detailed in its "Preliminary Term Sheet," assets are pledged as security to AML's planned debt issuance, in the form of a first floating charge security interest over the present and future property, assets and undertaking of AML, as legal owner, and ALP, as beneficial owner.<sup>24</sup>

25. AML submitted that continuing to fund long-lived assets with the long-term Debt Securities that diversify the maturity profile of such securities over the expected life of such assets is in the best interests of the ratepayers.<sup>25</sup>

26. For the purposes of this application, the Commission finds the rationale to issue secured debt to be reasonable. The credit rating related information provided by AML with the application is satisfactory for the purposes of the present application and provides reasonable assurance that the proposed issuance of the Debt Securities should not have a material adverse effect on the cost of other debt recovered through AML's revenue requirement.

27. The Commission is also satisfied that the proposed debt issuance is required for the purposes of financing assets or activities for the operation of the public utility and is, therefore, in the public interest.

28. Given the above, the Commission finds that AML has complied with the requirements of Section 101(2)(a)(ii) and has suitable justification to pledge assets as security to the planned debt issuance for Section 101(2)(d)(i) of the *Public Utilities Act*. Accordingly, the Commission approves AML's 2023 debt issuance application as filed.

29. The Commission retains its ability to exercise its regulatory oversight and to review the prudence of the Debt Securities issuance during its consideration of any general tariff application, other proceeding or as part of the Commission's review of the affairs, earnings and accounts of AML in the absence of a general tariff application.

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<sup>24</sup> Exhibit 28322-X0002, application, paragraph 13, and Appendix C, PDF page 108.

<sup>25</sup> Exhibit 28322-X0002, application, paragraph 7.

## Post-disposition undertakings by AML

30. In its application, AML undertook to submit the following:
- (i) Any Accredited Investor Term Sheet prepared in connection with any distribution of Debt Securities. Any distribution of Debt Securities under a Note Private Placement to be completed on or prior to December 31, 2023.<sup>26</sup>
  - (ii) A copy of any new DBRS rating report in respect of ALP, issued by this credit rating agency prior to the issuance of any of the Debt Securities.<sup>27</sup>
  - (iii) A copy of any new S&P ratings report in respect of ALP or ALP's senior, secured obligations, issued by this credit rating agency prior to the issuance of any of the Debt Securities.<sup>28</sup>
  - (iv) A resolution of the AML board of directors, following each issuance of the Debt Securities, authorizing such issuance.<sup>29</sup>
31. Regarding the post-disposition undertaking by AML, AML is directed to submit onto the record of this proceeding, as a post-disposition filing, the documents listed in paragraph 30 above, within one month after they are received.

## 5 Order

32. It is hereby ordered that:
- (1) Pursuant to Section 101(2)(a)(ii) of the *Public Utilities Act*:
    - (i) The Commission authorizes AltaLink Management Ltd. to cause AltaLink, L.P., to make one or more issues on or prior to December 31, 2023, of up to C\$500 million aggregate principal amount of Debt Securities, having a preferred term to maturity of 32 years or, alternatively, a term to maturity of two, three, five, seven, 10, 30, 31 or 40 years, as AltaLink Management Ltd. may determine to be appropriate having regard to capital market conditions and other relevant considerations at the time of issuance.
    - (ii) The Commission approves the issuances of the Debt Securities as having been made in accordance with law.
    - (iii) The Commission approves the purposes of such Debt Securities.
  - (2) Pursuant to Section 101(2)(d)(i) of the *Public Utilities Act*, the Commission authorizes AltaLink Management Ltd. to cause AltaLink, L.P., to grant security to lenders in respect of the Debt Securities, in the form of a first floating charge over

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<sup>26</sup> Exhibit 28322-X0002, application, paragraph 6.

<sup>27</sup> Exhibit 28322-X0002, application, paragraph 10.

<sup>28</sup> Exhibit 28322-X0002, application, paragraph 11.

<sup>29</sup> Exhibit 28322-X0002, application, paragraph 14.

the present and future property, assets and undertakings of AltaLink Management Ltd. as legal owner and AltaLink, L.P., as beneficial owner.

Dated on August 25, 2023.

**Alberta Utilities Commission**

*(original signed by)*

Vincent Kostas  
Acting Commission Member

**Appendix 1 – Proceeding participants**

<b>Name of organization (abbreviation)</b> <b>Company name of counsel or representative</b>
AltaLink Management Ltd. (AltaLink or AML)

Alberta Utilities Commission
Commission panel V. Kostaskey, Acting Commission Member
Commission staff N. Fitz-Simon (Commission counsel) P. Baker A. Hollis E. Davis

**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. Regarding the post-disposition undertaking by AML, AML is directed to submit onto the record of this proceeding, as a post-disposition filing, the documents listed in paragraph 30 above, within one month after they are received. .... paragraph 31