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Headnote

Mutual Reliance Review System for Exemptive Relief Application - issuer deemed to no longer be a reporting issuer under the Act – issuer fits within the intent of BCI 11-502 but cannot rely on the Instrument for technical reasons

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,
BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, NEW
BRUNSWICK, PRINCE EDWARD ISLAND, ONTARIO, NOVA SCOTIA,
NEWFOUNDLAND AND LABRADOR AND QUEBEC**

AND

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS**

AND

IN THE MATTER OF ALTAGAS SERVICES INC. and ALTAGAS LTD.

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Makers”), in each of Alberta, British Columbia, Saskatchewan, Manitoba, New Brunswick, Prince Edward Island, Ontario, Nova Scotia, Newfoundland and Labrador and Quebec (collectively, the “Jurisdictions”) has received an application from AltaGas Services Inc. (“AltaGas”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that a corporation resulting from the amalgamation of AltaGas, AltaGas Subsidiary Corporation and certain of AltaGas’ subsidiaries, known as AltaGas Ltd. (“AmalgamationCo”) be deemed to cease to be reporting issuer under the Legislation;
2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;

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4. AND WHEREAS the Applicants have represented to the Decision Makers that:
 - 4.1 AltaGas is a corporation incorporated and subsisting pursuant to the provisions of the *Canada Business Corporations Act* (the “CBCA”). AltaGas is an energy infrastructure based company that actively moves, processes and uses diversified energies to create value;
 - 4.2 AltaGas’ head and principal office is located at 1700, 355 – 4th Avenue S.W., Calgary, Alberta T2P 0J1;
 - 4.3 AltaGas is authorized to issue an unlimited number of Common shares (“Common Shares”) and an unlimited number of participating shares (“Participating Shares”). As at March 26, 2004, there were 9,000,000 Participating Shares issued and outstanding, all owned legally and beneficially by Enbridge Inc. (“Enbridge”), and 36,927,793 Common Shares issued and outstanding. In addition, as at March 26, 2004, 1,384,488 options (“Options”) to acquire Common Shares were outstanding. Holders of Common Shares, holders of Participating Shares and holders of Options are referred to collectively as “Securityholders”;
 - 4.4 the Common Shares were, until completion of the Arrangement, listed and posted for trading on the Toronto Stock Exchange (the “TSX “) under the symbol “ALA”;
 - 4.5 AltaGas is, and has been since 2000, a reporting issuer (or equivalent) under the laws of all of the provinces of Canada and is not currently in default of the securities legislation in such jurisdictions;
 - 4.6 AltaGas has recently reorganized its business into an income trust known as “AltaGas Income Trust” pursuant to a plan of arrangement under Section 192 of the CBCA (the “Arrangement”);
 - 4.7 AltaGas Income Trust (the “Trust”) is an unincorporated open-ended investment trust governed by the laws of the Province of Alberta and created pursuant to a declaration of trust dated March 26, 2004 (the “Declaration of Trust”);
 - 4.8 the head and principal office of the Trust is located at 1700, 355 - 4th Avenue S.W., Calgary, Alberta T2P 0J1;

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- 4.9 The Trust was established for the purposes of investing in the securities of Holding Trust, AltaGas General Partner Inc. (the “General Partner”), AmalgamationCo or any associate or affiliate thereof in the business or the ownership, lease or operation of assets or property in connection with gathering, processing, transporting, extracting, buying, storing or selling petroleum, natural gas, natural gas liquids or other related products, electricity or other forms of energy and related businesses;
- 4.10 the Trust is the sole shareholder of the General Partner and the sole unitholder of Holding Trust;
- 4.11 an unlimited number of trust units (“Trust Units”) may be created and issued pursuant to the Declaration of Trust. Each Trust Unit entitles the holder thereof to one vote at any meeting of holders of Trust Units (“Trust Unitholders”) or in respect of any written resolution of Trust Unitholders and represents an equal undivided beneficial interest in any distribution from the Trust and in any net assets of the Trust in the event of termination or winding-up of the Trust;
- 4.12 in order to allow the Trust flexibility in pursuing corporate acquisitions, and for purposes of the Arrangement, the Declaration of Trust allows for the creation of special voting units (“Special Voting Units”) which will enable the Trust to provide voting rights to holders of exchangeable securities;
- 4.13 under the terms of a voting and exchange trust agreement (the “Voting and Exchange Trust Agreement”), the Trust has issued a Special Voting Unit to a voting and exchange trustee (the “Voting and Exchange Trustee”) for the benefit of every person who receives Exchangeable Securities (as defined and described below) pursuant to the Arrangement. The Voting and Exchange Trustee is obligated to vote the Special Voting Unit at meetings of Trust Unitholders pursuant to the instructions of the holders of Exchangeable Securities. However, if no instructions are provided by the holders of Exchangeable Securities, the votes associated therewith in the Special Voting Unit will be withheld from voting;
- 4.14 the Trust has become a reporting issuer (or the equivalent) in certain Canadian jurisdictions and subject to the informational

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reporting requirements under the securities laws of such jurisdictions as a result of the Arrangement described below;

- 4.15 the TSX has approved the listing of the Trust Units in substitution for the Common Shares;
- 4.16 the General Partner is a corporation incorporated pursuant to the CBCA as a direct wholly-owned subsidiary of the Trust. The General Partner is the general partner of both AltaGas LP #1 and AltaGas LP #2;
- 4.17 pursuant to the Declaration of Trust, the board of directors of the General Partner is elected by the Trust at the direction of the Trust Unitholders;
- 4.18 pursuant to a delegation agreement the General Partner is delegated certain of the Trustee's powers and duties in respect of the business and affairs of the Trust;
- 4.19 the General Partner does not intend to become a reporting issuer (or the equivalent) in any Jurisdiction;
- 4.20 AltaGas Limited Partnership No. 1 ("AltaGas LP #1") and AltaGas Limited Partnership No. 2 ("AltaGas LP #2", and, together with AltaGas LP #1, the "Partnerships") are limited partnerships created pursuant to the laws of Alberta pursuant to limited partnership agreements;
- 4.21 the Partnerships are authorized to issue Class A limited partnership units ("LP #1 A Units", in the case of AltaGas LP #1, and "LP #2 A Units", in the case of AltaGas LP #2) and Class B limited partnership units ("LP #1 B Units", in the case of AltaGas LP #1, and "LP #2 B Units", in the case of AltaGas LP #2, and collectively the "Exchangeable Securities") and an unlimited principal amount of demand promissory notes, referred to as "LP #1 X Notes", in the case of AltaGas LP #1, and "LP #2 X Notes", in the case of AltaGas LP #2;
- 4.22 AltaGas LP #1 is initially authorized to issue an unlimited number of LP #1 A Units and LP #1 B Units. Similarly, AltaGas LP #2 is initially authorized to issue an unlimited number of LP #2 A Units and LP #2 B Units. Each unit ranks equally with each other unit of the same class or series and entitles the holder thereof to the same

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rights and obligations as the holder of any other unit of the same class or series and no limited partner is entitled to any privilege, priority or preference in relation to any other limited partner holding units of the same class or series;

- 4.23 initially, AltaGas LP #1 will have only outstanding LP #1 A Units, all of which will be issued to and held by Holding Trust and which are only permitted to be issued to, and held by, Holding Trust or an affiliate thereof. A holder of LP #1 A Units will be entitled to receive, and the General Partner shall, subject to applicable law, from time to time, pay distributions on LP #1 A Units as the General Partner determines;
- 4.24 initially, AltaGas LP #2 will have only outstanding LP #2 A Units, all of which will be issued to and held by AltaGas LP #1 and are only permitted to be issued to, and held by, AltaGas LP #1 or an affiliate thereof. A holder of LP #2 A Units will be entitled to receive, and the General Partner shall, subject to applicable law, from time to time, pay distributions on each LP #2 A Unit as the General Partner determines;
- 4.25 the principal terms of the Exchangeable Securities are that they are exchangeable for Trust Units at any time at the option of the holder and entitle the holder thereof to receive non-interest bearing loans from AltaGas LP #1 or AltaGas LP #2, as the case may be, equal to cash distributions made by the Trust on a Trust Unit and to direct the Voting and Exchange Trustee to vote the Special Voting Unit at all meetings of Trust Unitholders;
- 4.26 AmalgamationCo is the resultant corporation from the amalgamation of AltaGas and certain of its subsidiaries pursuant to the Arrangement. As a result, AmalgamationCo owns, directly or indirectly, all of the assets of AltaGas;
- 4.27 the head and principal office of AmalgamationCo is located at 1700, 355 - 4th Avenue S.W., Calgary, Alberta T2P 0J1;
- 4.28 AmalgamationCo is an indirect wholly-owned subsidiary of the Trust;
- 4.29 AmalgamationCo is presently and, absent the within relief, will remain a reporting issuer (or the equivalent) in certain Canadian jurisdictions and be subject to the informational reporting

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requirements under the securities laws of such jurisdictions as a result of the Arrangement. Instead of complying with those reporting requirements (which would include filing separate financial statements for AmalgamationCo), the holders of Exchangeable Securities will be provided with the documents filed by the Trust pursuant to the informational reporting requirements to which the Trust is subject under applicable Canadian securities laws;

- 4.30 AmalgamationCo is authorized to issue an unlimited number of common shares. Upon completion of the Arrangement, AltaGas LP #2 will be the sole holder of all of the issued and outstanding common shares of AmalgamationCo;
- 4.31 the Trust indirectly owns 100% of the outstanding common shares of AmalgamationCo and AmalgamationCo does not intend to issue any of its securities to the public;
- 4.32 as a result of the Arrangement:
 - 4.32.1 Securityholders (including Enbridge) now own all of the issued and outstanding Trust Units of the Trust;
 - 4.32.2 Securityholders (other than Enbridge and non-eligible Securityholders) now own all of the issued and outstanding LP #1 B Units;
 - 4.32.3 Enbridge owns all of the issued and outstanding LP #2 B Units; and
 - 4.32.4 the Trust, through Holding Trust, AltaGas LP #1 and AltaGas LP #2 now owns all of the issued and outstanding common shares of AmalgamationCo;
- 4.33 a meeting of the Securityholders was held on April 29, 2004 at which the Securityholders considered and passed a resolution (the "Arrangement Resolution") approving the Arrangement (the "Meeting"). The Arrangement Resolution was approved by over 99% of the votes cast at the Meeting by Securityholders, voting together as a single class;
- 4.34 the information circular and proxy statement dated March 26, 2004 (the "Circular") used in connection with the Meeting contains,

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among other things, disclosure regarding the details of the Arrangement and each of AltaGas, Holding Trust, the General Partner, AltaGas LP #1, AltaGas LP #2 and the Trust, being the parties to the arrangement agreement setting out the terms and conditions upon which the parties implemented the Arrangement. The Circular was mailed to Securityholders in the manner required by the CBCA and applicable securities legislation;

- 4.35 pursuant to the Legislation, upon completion of the Arrangement, AmalgamationCo (as the successor to AltaGas) remained a reporting issuer (or the equivalent) under the Legislation notwithstanding that it is now a wholly-owned subsidiary of AltaGas LP #2;
 - 4.36 AmalgamationCo does not intend to seek public financing by way of an offering of their securities;
 - 4.37 except as disclosed herein, AmalgamationCo does not have any other securities issued and outstanding, including debt securities; and
 - 4.38 AmalgamationCo is not in default of the securities legislation in the Jurisdictions.
- 5. AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each Decision Maker with respect to Holding Trust and AmalgamationCo (the “Decision”);
 - 6. AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;
 - 7. THE DECISION of the Decision Makers pursuant to the Legislation is that AmalgamationCo is deemed to have ceased to be a reporting issuer under the Legislation.

DATED this 26th day of May, 2004.

Patricia M. Johnston, Q.C.
Director, Legal Services & Policy Development