

ORDER NO. 90352

In The Matter of the Merger of AltaGas
Ltd. and WGL Holdings, Inc.

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9449

Issued: September 8, 2022

ORDER DENYING MOTION

On June 29, 2022, AltaGas Ltd. (“AltaGas”) and Washington Gas Holdings (“WGL” - together the “Companies”) filed a certificate to comply with the annual certification required by Condition 48 of Commission Order No. 88631. In response, the Apartment Building and Office Building Association of Metropolitan Washington (AOBA) filed a motion requesting the Commission to not accept the certificate. For the reasons discussed below, the Commission denies AOBA’s motion and accepts the Companies’ compliance filing.

1. AOBA’s Motion

On July 15, 2022, AOBA filed a motion responding to the Companies’ annual compliance filing, arguing that the Commission should not accept the “AltaGas Ltd Certificate” (the “Certificate”) because it is “factually incorrect and should not be accepted as a demonstration of compliance with the Commission’s merger Condition 48...”¹ To support its motion, AOBA cites the Certificate, which references Washington Gas’s “subsidiaries” four separate times.² AOBA alleges these representations are inaccurate because Washington Gas has no subsidiaries.

¹ AOBA Motion at 1.

² *Id.* at 2, *citing* the Certificate at 3.

Additionally, AOBA contends that the Certificate also erroneously states that “AltaGas has taken all available and necessary steps to effectuate the Corporate Reorganization Structure.”³ AOBA contends that Washington Gas’s 2020 and 2022 “Cost Allocation and Inter-Company Pricing Manual” demonstrate that Washington Gas has contracted to provide many services to both regulated and unregulated affiliates under both the WGL Holdings and AltaGas U.S. corporate umbrellas. AOBA contends that the Certificate fails to address how these affiliate transactions affect the separateness of Washington Gas and the extent to which these transactions affect the ongoing effectiveness of the ring-fencing measures imposed by the Commission’s AltaGas Order.

2. AltaGas and WGL’s Response

On July 29, 2022, the Companies responded to AOBA’s motion, making several arguments for why the Certificate is accurate and fully complies with Condition 48. First, the Companies contend that the June 29, 2022 Certificate is substantially the same as their previous four Condition 48 filings following the Commission's issuance of the AltaGas Order.⁴

Second, the Companies contend that Condition 48 essentially requires them to confirm that Conditions 36 and 37 remain effective. Condition 36 sets forth the various ring-fencing measures that the Commission ordered the Companies to erect following the merger closing in 2018. Condition 37 required the Companies to obtain a legal opinion from an independent bankruptcy attorney that a bankruptcy court would not consolidate the assets and liabilities of WGL and AltaGas in the event of an AltaGas bankruptcy. They argue that the language of Condition 48

³ Certificate at 3.

⁴ Response at 2, referencing Maillog Nos. 221206, 225987, 231026, 236030 and 241251.

simply requires the Companies to confirm annually that no change in circumstances has affected the separateness of the two companies.⁵

Third, the Companies note that WGL has never had any subsidiaries either at the time of the merger or since the close of the merger. Therefore, the references to "subsidiaries" in Condition 37 must refer to the possibility of WGL acquiring a subsidiary at some point in the future. The Certificate simply confirms that there has been no change in the Companies' corporate structure, and the non-consolidation opinion obtained and filed in December 2018 remains effective.⁶

Finally, the Companies argue that Conditions 19 and 25-29 (under the subheading "Affiliate Requirements") govern the relationship between WGL and its affiliates. So long as such transactions do not affect the corporate structure, ring-fencing measures or the non-consolidation opinion, they argue the transactions are irrelevant to the annual certificate filing required by Condition 48.⁷

3. Commission Decision

The Commission denies AOBA's motion and accepts the June 29, 2022 Certificate. The Commission has accepted substantially similar annual filings since 2018. While this alone would not be sufficient to deny AOBA's motion, the substantive requirements of Condition 48 are as the Companies explained in their response. Condition 48 requires a confirmation that the ring-fencing measures in Condition 36, as well as the non-consolidation opinion filed in December 2018, remain effective to protect WGL in the event of an AltaGas bankruptcy. The Companies have confirmed that no change in their corporate structure has occurred that would affect this separateness between the two companies.

⁵ *Id.* at 4-6.

⁶ *Id.*

⁷ *Id.* at 7-8.

The Commission also concurs with the Companies that the reference to "subsidiaries" in Condition 37 reflects the Commission's intent that WGL include any subsidiaries that it might acquire subsequent to the merger closing. Given that WGL had no subsidiaries at the time of the AltaGas Order, these references could not be interpreted any other way.

Finally, any transactions between WGL and its affiliates that do not affect the ring-fencing measures or the separateness of assets and liabilities in a bankruptcy court remains governed by Conditions 19 and 25-29. The record contains no evidence that the Companies have violated any of these conditions.

IT IS THEREFORE, this 8th day of September, in the year of Two Thousand Twenty-Two, by the Public Service Commission of Maryland, **ORDERED** that:

(1) The motion filed by Apartment and Office Building Association of Metropolitan Washington is denied; and

(2) The Commission accepts the June 29, 2022 filing by AltaGas Ltd and WGL Holdings as in compliance with Condition 48 of Order No. 88631.

/s/ Jason M. Stanek

/s/ Michael T. Richard

/s/ Anthony J. O'Donnell

/s/ Odogwu Obi Linton

/s/ Patrice M. Bubar

Commissioners