

ORDER NO. 89092

IN THE MATTER OF THE MERGER OF
ALTAGAS LTD. AND WGL HOLDINGS.
INC.

* BEFORE THE
* PUBLIC SERVICE COMMISSION
* OF MARYLAND

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* CASE NO. 9449

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Issue Date: April 15, 2019

ORDER ON MOTION SEEKING REPORT ON FINANCIAL CONDITION

On April 4, 2018, the Maryland Public Service Commission issued Order No. 88631 (“the Merger Order”) approving the merger application of AltaGas, WGL Holdings (“WGLH”) and Washington Gas Light Company (“Washington Gas”) (“the Acquisition”), subject to a number of financial and operational conditions, including Conditions 37 and 38.¹ On February 6, 2019, the Maryland Office of People’s Counsel (“OPC”) filed a Motion to Enforce Compliance with Condition 37 or, in the Alternative, to Require AltaGas to Report to the Commission on Its Current Financial Condition and Risks (“OPC Motion”).²

¹ Condition 37 requires in part that—within 180 days of the Merger Order—AltaGas obtain a legal opinion, reasonably satisfactory to the Commission, to the effect that, as a result of the ring-fencing measures AltaGas has implemented for Washington Gas and its subsidiaries, a bankruptcy court in the United States or Canada would not consolidate the assets and liabilities of the special purpose entity (SPE) or Washington Gas or Washington Gas’s subsidiaries in the event of a bankruptcy of AltaGas or its affiliates other than the SPE and Washington Gas or Washington Gas’s subsidiaries. (Order No. 88631, Appendix A, Paragraph 37). Condition 38 requires that AltaGas and Washington Gas will use reasonable efforts to maintain Washington Gas’s credit ratings at investment-grade for its publicly-traded securities and will use reasonable efforts and prudence to preserve an investment-grade credit rating for Washington Gas’s senior unsecured debt. (Order No. 88631, Appendix A, Paragraph 38).

² OPC Motion (ML# 223887).

In its Motion, OPC documents several negative financial developments that AltaGas has experienced since the Commission approved the Acquisition. In order to address these concerns, OPC requests that AltaGas be directed to “fully comply with Condition 37,” and specifically requests that AltaGas be directed to file a report analyzing “its operational and financial risks to determine the adequacy of existing ring fencing measures.”³ Alternatively, OPC requests the Commission require AltaGas to file a report on its “current financial condition and risks.”⁴ If this request is granted, OPC further requests that it and other stakeholders be permitted to conduct discovery on AltaGas’s filing and also be permitted the opportunity to comment.

The Commission finds good cause to direct AltaGas to file a report detailing its current financial condition and risks.

A. OPC’s Motion

OPC argues that AltaGas’s financial metrics have declined since the Acquisition closed in July 2018, and submits that while AltaGas timely met the non-consolidation requirement established by the Commission in Condition 37, it failed to file its required ring-fencing analysis.⁵ Additionally, OPC describes four categories of concern that it believes warrant an analysis of AltaGas’s operational and financial risks: (1) credit rating

³ OPC Motion at 3; OPC Reply to AltaGas’s Response (ML# 224140) (“OPC Reply”) at 1.

⁴ OPC Motion at 3.

⁵ OPC Motion at 11. OPC maintains that the non-consolidation opinions filed by AltaGas do not contain any analysis of AltaGas’s operational and financial risks. (OPC Reply at 1) Additionally, OPC argues that the Vinson & Elkins non-consolidation opinion letter is dated December 11, 2018, and the opinion by Stikeman Elliott LLP is dated December 13, before the announcement by AltaGas of the dividend cut cited by OPC, and do not mention the credit rating downgrades of December 2018 cited by OPC. Although each opinion letter complies with the first part of Condition 37 and finds the ring fencing to be adequate, neither analyzes the “operational and financial risk” of AltaGas.

downgrades; (2) stock price declines; (3) dividend cuts; and (4) AltaGas's 2018 Q3 earnings results.

1. Credit Ratings

First, OPC argues that AltaGas's financial condition has negatively impacted the credit ratings of WGLH and Washington Gas since the Commission's approval of the Acquisition. OPC notes that on July 11, 2018, Washington Gas notified the Commission that the three major credit rating agencies had downgraded both Washington Gas and WGL Holdings below their bond ratings at the time of the Acquisition's closing.⁶ Also, in December 2018, Standard and Poor's ("S&P") downgraded AltaGas from BBB to BBB-.⁷ On December 19, 2018, S&P moved WGL Holdings' Senior Unsecured Debt Rating to below investment grade.⁸ On the same day, DBRS downgraded AltaGas from BBB to BBB (low).⁹

2. Stock Price

Second, OPC notes that since the Commission approved the Acquisition in April 2018, AltaGas's stock price has dropped from \$25.00/share CAD to approximately \$14.70 CAD.¹⁰ At the time of the evidentiary hearings in this case—in October 2017—AltaGas's stock price was approximately \$29.00/share CAD, and witnesses for AltaGas anticipated that its stock price would rebound following closure of the Acquisition.¹¹ OPC acknowledges that AltaGas's stock price is outside the Commission's purview; however,

⁶ Washington Gas—Bond Rating Status Report, dated Jul. 11, 2018 (ML# 221248).

⁷ AltaGas Ltd.—Downgraded Bond Rating by DBRS, dated Dec. 26, 2018 (ML# 223386).

⁸ Washington Gas—Bond Rating Status Report, dated Dec. 20, 2018 (ML# 223359).

⁹ AltaGas Ltd.—Downgraded Bond Rating by DBRS, dated Dec. 26, 2018 (ML# 223386).

¹⁰ OPC Motion at 6-7.

¹¹ OPC Motion at 6-7.

OPC emphasizes that “a Company’s stock price ‘reflects the market’s view of its entire business pasted against the industry in which it operates.’”¹²

3. *Dividend Cut*

Third, OPC notes that on December 13, 2018, AltaGas announced it intended to cut its annual dividend by 56%—from \$2.19/share CAD—to \$0.96/share CAD.¹³ In October 2017, AltaGas witnesses testified that they expected to be able to increase AltaGas’s dividends in 2018.¹⁴ OPC asserts that AltaGas’s recently announced dividend cut “casts serious doubt on AltaGas’s financial health.”¹⁵

4. *2018 Q3 Earnings Results*

Finally, OPC’s Motion contrasts AltaGas’s prior annual positive earnings with the negative earnings it reported during the first three quarters ending September 30, 2018. As an example, AltaGas reported positive earnings of \$41 million through September of 2017, but negative earnings of \$676 million through September of 2018.¹⁶

B. AltaGas’s Response

On February 19, 2019, AltaGas filed a response, asserting that the Companies are in “full compliance with all merger conditions.”¹⁷ Additionally, AltaGas contends that OPC seeks information that is (1) already contained within the non-consolidation legal opinion of Vinson & Elkins that AltaGas submitted on December 14, 2018, pursuant to Condition 37, and (2) is publicly available through the reports and compliance filings that

¹² OPC Motion at 7.

¹³ OPC Motion at 8.

¹⁴ OPC Motion at 8-9 (AltaGas witnesses Harris and Toivanen).

¹⁵ OPC Motion at 9.

¹⁶ See OPC Motion at 10 (chart).

¹⁷ AltaGas Response at 1.

AltaGas generates as a publicly traded company.¹⁸ AltaGas adds that “Section II (FACTS) of the Vinson & Elkins opinion ... includes a comprehensive discussion of the operational, financial and organizational actions and structures in place to effect the ring-fencing of Washington Gas.”¹⁹

With regard to credit ratings, AltaGas submits that Washington Gas’s credit ratings continue to remain at or above investment grade, therefore “the requirement to provide the Commission a plan to restore those credit ratings has not been triggered,”²⁰ and insists that AltaGas “remains fully capable of delivering on its commitments to Washington Gas and its customers.”²¹ It asserts that the recent credit ratings actions by S&P and DBRS “are a reflection of the transition AltaGas is undertaking to effectuate the merger with Washington Gas.”²²

Finally, AltaGas submits that OPC’s request that AltaGas be required to file a report with the Commission on its current financial condition and risks “is not tied to any merger condition.”²³ However, AltaGas proposes to meet quarterly with OPC to discuss the Companies’ implementation of and compliance with Order No. 88631.²⁴ AltaGas indicates that it has established a similar quarterly meeting arrangement with the District of Columbia Office of People’s Counsel.²⁵

¹⁸ AltaGas Response at 5.

¹⁹ AltaGas Response at 3 (citation omitted).

²⁰ AltaGas Response at 4. *See also*, Washington Gas Response (ML# 224041) at 1. (Washington Gas also submits that “[c]onsistent with the principal obligation of Condition 38, Washington Gas’ credit ratings remain at or above investment grade and thus there is no obligation or necessity for the Company to describe the referenced WGLH measures and plans.” (citation omitted)).

²¹ AltaGas Response at 6.

²² AltaGas Response at 6.

²³ AltaGas Response at 4.

²⁴ AltaGas Response at 7.

²⁵ AltaGas Response at 7.

Commission Decision

OPC’s Motion raises significant post-merger developments that signify a need for further regulatory analysis. As the Commission observed in Order No. 88631, the ring-fencing measures prescribed in this case are intended to protect Washington Gas “in the event of a financial hardship suffered by its new parent company,” not only from the threat of an AltaGas bankruptcy.²⁶ AltaGas’s response to the OPC Motion largely addresses the concerns raised with regard to the Company’s downgraded credit ratings by S&P and DBRS since the closing of the Acquisition, but does not address—at least not in any significant way—OPC’s concerns regarding AltaGas’s declining stock prices, dividend cuts, and 2018 Q3 earnings results.

The Commission does not find AltaGas’s compliance with Condition 37 and 38 deficient and thus denies the OPC Motion to enforce compliance with the merger conditions. However, the Commission has an ongoing regulatory obligation to determine whether Washington Gas’s ratepayers remain adequately protected, or if the identified post-Acquisition financial issues require additional protections. Given the financial developments that OPC has documented over the past 180 days, the Commission concludes that a report detailing AltaGas’s current financial condition and risks is warranted.²⁷ Accordingly, OPC’s alternative motion is granted. Following AltaGas’s report, OPC, the

²⁶ Order No. 88631 at 49-50. OPC observed that the Public Service Commission for the District of Columbia has also opened a matter to address similar issues presented by the Office of People’s Counsel in that jurisdiction. Case No. 1142, Item No. 464.

²⁷ Pursuant to Condition 19 of the Merger Order, AltaGas has consented to the jurisdiction of this Commission for “all matters related to the merger . . . to the extent relevant to operations of Washington Gas in Maryland.” (Order 88631, Appendix A, Paragraph 19).

Commission's Staff, and other parties may be permitted to conduct limited discovery and file comments, upon further notice of the Commission.

Finally, the Commission acknowledges that AltaGas has offered to meet with OPC and Commission Staff on a quarterly basis to discuss its efforts regarding implementation and compliance with Order No. 88631. The Commission encourages OPC and Staff to engage with AltaGas at these meetings to address outstanding concerns.

IT IS THEREFORE, this 15th day of April, in the year Two Thousand and Nineteen, by the Public Service Commission of Maryland,

ORDERED: (1) That the Commission hereby denies the Office of People's Counsel's Motion to Enforce Compliance with Condition 37;

(2) That the Commission hereby grants the Office of People's Counsel's alternative request to require AltaGas to file a report with the Commission on AltaGas's current financial condition and risks;

(3) That AltaGas is directed to submit this report to the Commission within 60 days of the date of this order; and

(4) That following the submission of AltaGas's report, OPC and other parties in Case No. 9449 may be permitted conduct limited discovery and file comments, upon further notice of the Commission.

By Direction of the Commission

/s/ Terry J. Romine

Terry J. Romine
Executive Secretary