

Rule 031

Conditional Exemption from Specific Financing and Reporting Requirements

This rule was approved by the Alberta Utilities Commission and is effective December 6, 2016.

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1 Introduction

This rule governs 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, as provided for in Decision 21555-D01-2016.¹

2 Definitions

In this rule:

- (a) “Alberta securities laws” has the meaning ascribed to it by section 1(b) of the *Securities Act*, RSA 2000, c. S-4;
- (b) “Commission” means the Alberta Utilities Commission established under section 2 of the *Alberta Utilities Commission Act*;
- (c) “designated owner” means:
 - (i) an owner of a public utility that is either an electric utility or a gas utility, who is designated under section 1 of the *Public Utilities Designation Regulation* AR 194/2006, as amended from time to time; and
 - (ii) an owner of gas utility, who is designated under section 2 of the *Gas Utilities Designation Regulation* AR 257/2007, as amended from time to time;
- (d) “electric utility” has the meaning ascribed to it by section 1(1)(o) of the *Electric Utilities Act*;
- (e) “equity and long-term debt approval provisions” means section 101(2)(a) of the *Public Utilities Act*, and section 26(2)(a) of the *Gas Utilities Act*, or both;
- (f) “gas utility” has the meaning ascribed to it by section 1(g) of the *Gas Utilities Act*;
- (g) “owner of a gas utility” has the meaning ascribed to it by section 1(j) of the *Gas Utilities Act*;
- (h) “owner of a public utility” has the meaning ascribed to it by section 1(h) of the *Public Utilities Act*;
- (i) “public utility” has the meaning ascribed to it by section 1(i) of the *Public Utilities Act*;

¹ Decision 21555-D01-2016: Conditional Exemption from Specific Financing and Reporting Requirements, Proceeding 21555, December 6, 2016.

- (j) “securities” includes the shares or stock of a designated owner and any evidences of indebtedness of a designated owner, payable in more than one year from the date of debt issuance;
- (k) “utility holding corporation” means a designated owner that directly or indirectly holds securities to which are attached more than 50 per cent of the votes that may be cast to elect directors of an entity that operates a gas utility or an electric utility, but the designated owner does not directly operate the utility itself.

3 Exempted securities transactions

3.1 Designated owners, other than utility holding corporations, are exempted from the requirement to seek advance Commission approval for an issuance of securities in accordance with the equity and long-term debt approval provisions, provided that:

- (a) the issuance is denominated in Canadian dollars;
- (b) the issuance proceeds are to be used solely in connection with the provision of regulated utility services;
- (c) the issuance does not require utility assets to be pledged as security;
- (d) the issuance will be completed in accordance with Alberta securities laws and other applicable law;
- (e) the issuance will not result in a person directly or indirectly holding in the aggregate, securities to which are attached more than 20 per cent of the votes that may be cast to elect directors of the issuing entity, if such a degree of ownership did not exist prior to the issuance; and
- (f) in the case of a debt issuance, the contractual entitlements of the creditors prior to default, or remedies available to creditors in the event of default, do not include an ability to appoint a chief executive officer, president or equivalent positions, appoint members to the board of directors, or otherwise assume control of the issuing entity, other than through the appointment of a receiver, receiver-manager or trustee in bankruptcy.

3.2 Utility holding corporations are exempted from the requirement to seek advance Commission approval for an issuance of securities in accordance with the equity and long-term debt approval provisions, provided that:

- (a) the issuance is denominated in Canadian dollars;
- (b) the issuance does not require utility assets to be pledged as security;
- (c) the issuance does not require the shares of a designated owner to be pledged as security;

- (d) the issuance will be completed in accordance with Alberta securities laws and other applicable law;
- (e) in the case of a share issuance, the issuance will not result in a person directly or indirectly holding in the aggregate, securities to which are attached more than 50 per cent of the votes that may be cast to elect directors of the issuing entity, if such a degree of ownership did not exist prior to the issuance; and
- (f) in the case of a debt issuance, the contractual entitlements of the creditors prior to default, or remedies available to creditors in the event of default, do not include an ability to appoint a chief executive officer, president or equivalent positions, appoint members to the board of directors, or otherwise assume control of the issuing entity, other than through the appointment of a receiver, receiver-manager or trustee in bankruptcy.

3.3 Designated owners that are exempted from application of the equity and long-term debt approval provisions may complete issuances of securities without further notice to the Commission.

3.4 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*.

4 Additional exemptions for utility holding corporations

4.1 In addition to the exemptions provided in Section 3.2, utility holding corporations are exempted from application of the following provisions of the *Gas Utilities Act*, the *Public Utilities Act* and the *Electric Utilities Act* which would otherwise impose continuing obligations on utility holding corporations to file rate schedules with the Commission, maintain books and records in accordance with the Commission's uniform system of accounts, periodically file detailed reports of operations and finances with the Commission, maintain depreciation, amortization or depletion accounts in a manner prescribed by the Commission, and seek Commission approval for rate changes:

- (a) sections 35(a), 35(c), 35(d) 35(e) and 44 of the *Gas Utilities Act*;
- (b) sections 88(a), 88(c), 88(d), 88(e) and 103 of the *Public Utilities Act*; and
- (c) sections 118(1)(a), 118(1)(b) and 118(1)(c) of the *Electric Utilities Act*.

5 General provisions

- 5.1** Where available, the exemptions described in this rule may be relied upon without being explicitly claimed.
- 5.2** An inability on the part of a designated owner to rely on an exemption described in this rule in respect of a given transaction, does not amount to a refusal on the part of the Commission to approve the transaction. Ineligible transactions will be considered for approval by way of an application process.
- 5.3** Nothing in this rule relieves a designated owner from the necessity of demonstrating the prudence of an incurred cost of debt or equity in applicable Commission rate proceedings.
- 5.4** The Commission may conduct audit activities in respect of issuances completed in reliance on the exemption created by Decision 21555-D01-2016, and undertaken in accordance with this rule.