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November 24, 2016

Yukon Utilities Board
Box 31728
Whitehorse, Yukon Y1A 6L3

Attention: Mr. Robert Laking, Chair

Re: ATCO Electric Yukon / Yukon Electrical Company Limited
2016-2017 General Rates Application – Phase 1 - UCG Final Argument

Dear Mr. Laking:

Enclosed are the final argument submissions of the Utilities Consumers' Group in the above noted proceeding.

If there are any questions concerning the contents of this submission, please direct all inquiries to me by email at rrondeau@northwestel.net or by phone at 633-5210.

Yours truly,

Roger Rondeau
Utilities Consumers' Group

YUKON UTILITIES BOARD

IN THE MATTER OF the *Public Utilities Act*
Revised Statutes of Yukon, 2002 c.186, as amended

and

IN THE MATTER OF ATCO Electric Yukon's / Yukon Electrical Company Limited's General Rate Application for 2016 and 2017

FINAL ARGUMENT OF

UTILITIES CONSUMERS' GROUP

November 24, 2016

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INTRODUCTION and OVERVIEW

1. The Utilities Consumers' Group (UCG) is a not-for-profit organization registered as a society in the Yukon since 1993. UCG represents residential and small business ratepayers in regulatory proceedings, conducts research, makes submissions, communicates with active stakeholders, including government, and helps consumers with issues they have with utility service providers.

2. This submission summarizes positions of UCG for the Yukon Utilities Board's (Board) consideration. UCG's final arguments follow the evidence outline contained in ATCO Electric Yukon's (AEY) application dated May 11, 2016. While UCG has attempted to be as thorough as possible, it should not be assumed that UCG is in agreement with AEY's position on any issue for which UCG has not provided specific comment in this argument. Where UCG has not specifically addressed an issue, it is believed that the Board has the benefit of arguments of other intervenors and the record in this proceeding to make informed decisions.

3. UCG views AEY's current General Rate Application as an application for approval of revenue requirements for calendar years 2016 and 2017. Ultimately, the purpose of the Board's review is to ensure that the revenue requirement to be recovered in rates allows adequate, reliable and affordable supply, transmission and distribution of electricity in the Yukon.

4. The public review of AEY's current General Rate Application has raised many important issues for current and longer term consideration. An ongoing concern for UCG is the lack of a comprehensive and multi-stakeholder approach to the development of the General Rate Application. UCG submits that, as part of its decision in these proceedings, the Board should make very specific directions to AEY with regards to the timing of general rates applications and the need for comprehensive stakeholder consultations while general rates applications and other applications are being developed and drafted for submission to the Board. It is during this development phase that stakeholders like UCG should be given an opportunity to provide the utilities with not only feedback on what the utility is thinking of proposing but also views on issues that need to be addressed from a ratepayer perspective.

5. UCG is also concerned with the continued inability of AEY and Yukon Energy Corporation (YEC) to work together on a more comprehensive application and analysis of the cumulative impacts of their proposals and operations on electricity end-users. This is all the more concerning given the recommendations and directions that the Board has provided both AEY and YEC over the last few years in this regard. UCG submits that what is needed in the Yukon is a coordinated effort protocol or regulatory partnership between the two utilities. UCG is asking the Board to take this opportunity to provide specific direction to the utilities in this area.

6. UCG submits that given that rates are set on a Yukon-wide basis, AEY and YEC should be required to file annual consolidated operating results so that comparisons can be made to the allowed costs of service and revenue recovery on a more timely basis. UCG submits that it is difficult to recommend policy and operational adjustments when the utilities wait several years between revenue requirement applications and their operations result in earnings well in excess of Board-approved amounts. UCG submits that at the very least, AEY and YEC should be directed to avoid submissions of individual rate applications since, to some degree, all customers pay the same combined rates.

7. UCG continues to be concerned with the lack of cooperation that AEY displayed during this proceeding with respect to providing requested information. UCG is concerned with the information that it must continually request through the interrogatory process in every regulatory proceeding. UCG submits that it should also not be necessary for intervenors to continually submit motions regarding incomplete responses to information requests and incur these additional costs.

8. Likewise, in response to interrogatories and during an oral hearing, UCG submits that it does not assist the Board or intervenors to have AEY continually refer to documents in unspecified regulatory proceedings or public web sites that the questioner can try to look up on their own. UCG submits that this is a complete disregard for the regulatory process that creates frustration for intervenors with limited resources trying to add value to the process within a compressed schedule.

9. UCG submits that one way to help control the costs of these regulatory proceedings is to have the Board direct AEY (and YEC) to be more forthcoming with requested information and to agree to provide the information they reference rather than have intervenors search and incur additional costs. UCG submits that filing requirements need to be established in the Yukon (as they are in all other jurisdictions) related to various types of applications to the Board.

SUMMARY OF UCG's PRIMARY ARGUMENTS

10. As part of its decision in these proceedings, the Board should make very specific directions to AEY (and YEC) with regards to the timing and content of general rates applications and the need for comprehensive stakeholder consultations while general rates applications and other applications are being developed for submission to the Board. The concept of a Consumer Panel should be evaluated and implemented.

11. Filing requirements need to be established in the Yukon (as they are in all other jurisdictions) related to various types of applications to the Board.

12. AEY must be directed to change their budgeting and application processes to allow for reviews of their budgets and general rates applications in advance of the effective dates of the test years. This is standard operating procedure in other jurisdictions in which utilities are just as busy if not busier than AEY.

13. Planning for an efficient and effective regulatory review of utility revenue requirements and rates should include comprehensive stakeholder input, not only in the review stages of a proposed filing, but also during the development of a filing so that meaningful, transparent and comprehensive evidence is presented for consideration.

14. Submissions related to revenue requirement and rates approval in the Yukon should be a joint undertaking between the AEY and YEC with input from government entities (e.g., the Energy Solutions Centre) as opposed to a process that each entity undertakes on its own application in separate years without regard for other stakeholders and each other.

15. Once AEY's 2016 and 2017 revenue requirements are established by the Board, existing rates should continue to be applied until the Board makes a determination on cost allocation, rates and terms and conditions of service following the completion of a Phase 2 review based on the allowed revenue requirements. A variance account should be established to record the revenue surplus / deficit realized in 2016 and 2017 pending the results of a Phase 2 review.

16. Given the requirement for AEY to work with YEC to assemble cost of service and other Phase 2-related evidence, UCG submits that any final adjustments to rates and charges applied to the bills of Yukon ratepayers should be deferred until after the Phase 2 evidence has been reviewed and the Board has rendered a final decision.

17. There should be no recovery of any foregone revenue from January 1, 2016 to the date on which the Board approves rates following the compliance filing related to this application. While AEY will always refer to what the Board is legislatively allowed to approve, UCG submits that delayed filings and reviews that are not completed until the test year is over need to be avoided through a penalty system. If repeated behavior is not corrected, the regulatory system will deteriorate and be controlled by the utilities.

18. With respect to the Phase 2 application, UCG submits that a filing deadline should be established for some time in 2017 so that fully informed rate design decisions can be made in advance of the December 31, 2018 expiry of the OIC constraint on rate design and implementation. UCG submits that the utilities should be directed to involve stakeholders in consultations as soon as practical so that the filing deadline does not start to slip and the review process is not unnecessarily extended.

19. If the Phase 2 review indicates that the industrial rates established by the Yukon government do not recover the full cost of service for that class, then UCG submits that the Yukon government, not the non-industrial ratepayers, should be held liable for the revenue deficiency in the event that the preferred policy is to continue to charge industrial customers artificially lower rates. UCG contends that the utilities' franchise obligations to serve should not carry with it an implicit obligation on the part of ratepayers to subsidize service to industrial customers. If the Board stays firm in its decision that non-industrial ratepayers should not subsidize industrial customers, then UCG believes that this will force the Yukon government to finally take responsibility for its actions.

20. UCG submits that AEY should ensure that weather normalization is used for load forecasting as well as results reporting so that load variances resulting from weather can be isolated.

21. Load forecasting for the 15,000 or so non-industrial customers of electricity in the Yukon should be undertaken in a comprehensive way by AEY and YEC in full cooperation, not, as is currently the case, in a piecemeal and apparently inconsistent manner.

22. Load forecasting and planning for load growth should account for the base, non-industrial load separately from the more transitory industrial load potential so as to protect longer term ratepayers from adverse rate impacts associated with capital spending made necessary for the purpose of meeting short term industrial loads.

23. UCG is concerned with AEY's forecasting methodologies. As was noted by the City of Whitehorse's consultant, the Board must take note of the areas of systematic over-forecasting and adjust those portions of revenue requirement where it finds that AEY has a track record of inflating costs being recovered in rates.

24. The Board should direct AEY to reduce O&M costs per customer by 10% in each of the test years and establish a clear plan of actions that will reduce these escalating costs.

25. AEY should not be granted any increase to property taxes for the test years given the over collections since base rates were last set and the lack of evidence indicating that assessments and the resulting property taxes will actually increase during the test period.

26. Given AEY's cumulative excess earnings since 2010, AEY should not receive a bonus risk premium as part of its allowed return on equity.

27. The Board should establish AEY's capital structure with a 37% equity component with a related return on equity equal to the 8.3% for 2016 and 8.5% for 2017 established as the Alberta Utilities Commission Generic Cost of Capital benchmark.

28. A deferral account should be established to track differences between forecast and issued debt interest costs.

29. AEY should not be allowed to add cost overruns to rate base unless they can provide evidence that the cost overruns were prudently incurred given the approved scope of the projects.

30. All deferred study costs should be removed from rate base and either amortized (if prudent) outside of rate base or rolled into a related capital asset.

31. The Board should consider the engagement of an independent expert to assist in the benchmarking of the cost components of AEY and YEC operations to appropriate comparators within North America. The Board and intervenors require this information to assess the performance of these utilities relative to industry standards and to assist in the important task of adjudicating the prudency of utility decision-making.

32. Ratepayers should be credited back with any recoveries that AEY has made on regulatory costs that have not yet been determined for Phase I and Phase II of the current general rates application.

33. UCG submits that there is no reason why a Performance-Based Regulation (PBR) or Incentive Regulation (IR) mechanism could not be considered following the completion of a Phase 2 review and several compelling reasons to do so. It appears to UCG that there are considerable asymmetries in information between AEY and the Board and intervenors that make it difficult to ensure that AEY is carrying on operations in an efficient manner. PBR or an IR mechanism can alleviate the difficulty associated with that regulatory duty by incorporating a formula that provides both ratepayer protection together with a productivity dividend and a financial

incentive on the part of AEY to become more efficient. As well, there should be a considerable reduction in regulatory costs which are significant considering the size of the customer base.

34. UCG submits that there has not been enough customer impact analysis evidence placed on the record to fully inform the Board what is happening to revenue-to-(true)-cost ratios nor the end user's bill.

35. All significant capital projects should be designated by the Yukon government as regulated projects pursuant to Part 3 of the *Public Utilities Act* (or by equivalent government order for review) so that they can be individually reviewed by the Board and stakeholders prior to significant investment and construction. In the case of large, time sensitive projects, an ongoing audit process can be implemented to ensure project transparency and to provide ongoing approval as the project develops, while allowing the project to proceed without undue delay.

36. While it is understandable that AEY will need to spend some money on detailed engineering to properly define capital projects and on regulatory proceedings, any money spent should be held with all other project management costs in a deferral account and not rolled into rate base until the Board first approves the need and then later approves any expenditure for recovery in rates.

37. AEY’s reliability performance measures should include customer-specific reliability measures (e.g., customers experiencing multiple interruptions) as well as ways to monitor momentary outages which are a significant issue for Yukon residences and business.

38. AEY should be directed to not only address bill mitigation but to develop and implement a policy in this regard.

GENERAL COMMENTS

39. On May 11, 2016, AEY submitted an application to the Board requesting approval of forecast revenue requirements for 2016 and 2017 as well as approval of an interim refundable rate rider effective January 1, 2016. Beyond approval of its revenue requirements for 2016 and 2017, AEY is also seeking recovery for any revenue shortfall arising in 2016 from rates charged its customers up to the date of the approval of the revenue requirement.

40. UCG notes that AEY waited until nearly 5 months of 2016 had passed before submitting an application to the Board to approve a 2016 revenue requirement. AEY also requested an interim rate adjustment be approved for implementation within 5 weeks of its application.

41. UCG submits that this is not a standard approach for a public utility in most jurisdictions from a regulatory perspective. Given the ongoing financial monitoring and shareholder reporting conducted by every utility, it is obvious that AEY knew well in advance of its application date that it wanted to apply for an increase in rates.

42. While an interim refundable rate adjustment was granted by Board Order 2016-02, UCG submits that in order to consider the reasonableness of AEY's request, the Board must consider the prevailing utility practice when it comes to approval of retroactive rates[1]. Just because the Board has ruled on past applications brought by both AEY and YEC where rates were implemented on a full year basis even though the applications were filed after January 1 of the relevant test year in question, it should not be concluded that this can be considered normal industry practice from both the standpoint of the factual backdrop and the statutory requirements. While AEY will try to argue that it is justified to file in May of the test year, UCG submits that the legislation relied upon by AEY is a guideline that the Board may use to inform its decisions in this regard.

43. Most jurisdictions in Canada and the United States have adopted a forward-looking test year as the basis for approving a regulated company revenue requirements. UCG submits that there are a number of reasons for the adoption of this method. First, it reduces the risk on the utilities of being unable to recover for capital and operating expenses already committed, as is the case when the test year is backward looking and historical. Secondly, it provides more fairness to ratepayers in that they are aware of the rate they are actually paying for using the service, and the expenses associated with the rate charged affect the rates in the year for which the ratepayer is billed. In other words, there are no generational issues in the recovery of revenue requirement.

44. The revenue requirement and, in turn, rates are set prospectively in order to attempt to match the costs that are embedded in the rates with the time period in which the rates are in effect. Conceptually, prices are intended to reflect the costs of the utility at the time service is provided. AEY testified at its last GRA that it subscribes to the concept of cost causation and that customers that are responsible for the costs would be responsible for paying for those costs[2]. There was no testimony in the current proceeding to counter that position.

45. AEY also apparently believes that it is important that rate signals be sent to customers in a timely fashion to allow them to take whatever measures may be possible to respond to changes in rates. During the oral hearing for its last GRA, AEY acknowledged and supported the desirability of advance rate signals when it is in their interest to do so[3]:

> *Q. Thank you. Panel, I would like to begin with a question to Mr. Grattan. And I remember from your conversation this morning in relation to depreciation policy, you indicated that it was in your opinion of some great importance that the proper pricing signals are sent to the customers of AEY. And I take it that's a policy that should be applied across the board to --*
>
> *A. MR. GRATTAN: What do you mean by "across the board"?*
>
> *Q. Well, with respect to issues associated with rates, that the customer should get price signals and be able to adjust their behaviour in accordance with the same?*

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[1] OIC 1995/090 – Section 3 - Normal principles to apply
[2] YECL 2013-2015 GRA, Transcript Volume 1, November 4, 2013, page 135
[3] YECL 2013-2015 GRA, Transcript Volume 1, November 4, 2013, pages 134-135

A. MR. GRATTAN: I think that would be a fair comment, that Yukon Electrical subscribes to the concepts of cost causation and that customers that are responsible for the costs would be responsible for paying for those costs.

46. However, unlike YEC in its 2012-2013 General Rates Application, AEY does not allege some inability to file on time arising from some obstacle that management could not overcome. Instead, in its last GRA, AEY advanced a new regulatory proposition during the oral hearing that apparently still applies today that it is more efficient to file in a test year period in order to get the previous year's numbers correct[4]:

Q. What you're saying to me now is that the historical record of the previous year is more important to establish than it is to establish a test year or to have your rates in place for the test year. Isn't that what you're saying to me?

A. MR. GRATTAN: I am saying in this jurisdiction it is Yukon Electrical's position that that is the most efficient way of going about it. Yes, that's exactly what I'm saying.

47. While AEY may deserve commendation for candor, it is advancing a regulatory ideal that lacks support in any principled framework of ratemaking.

48. The practice of limiting retroactive recovery of revenue requirement from a period predating the regulated companies rate application or subsequent rate order has been considered by Canadian tribunals and courts. The 1978 Supreme Court of Canada Decision in *P.U.B. v. City of Edmonton*[5], set out in the judgment of Estey, J. , the standard approach to the setting of rates on a prospective basis applicable to the *Gas Utilities Act of Alberta*:

"The statutory pattern is founded upon the concept of the establishment of rates in futuro for the recovery of the total forecast revenue requirement of the utility as determined by the Board. The establishment of the rates is thus a matching process whereby forecast revenues under the proposed rates will match the total revenue requirement of the utility. It is clear from many provisions of The Gas Utilities Act that the Board must act prospectively and may not award rates which will recover expenses incurred in the past and not recovered under rates established for past periods".[6]

49. AEY has testified in the past that it was not aware of any examples of decisions by regulators in other jurisdictions which denied utilities from recovering the full test year revenue requirement in a filing situation similar to what has happened with AEY's current application. This claim was made despite the fact that AEY was a registered intervenor in the regulatory proceeding addressing YEC's 2012-2013 general rates application and Exhibit C3-24 in that proceeding contained excerpts from three Ontario Energy Board Decisions that clearly prohibited small utilities faced with similar regulatory challenges as AEY from recovering applied-for revenue

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4 YECL 2013-2015 GRA, Transcript Volume 1, November 4, 2013, page 139
5 [1979] 1 S.C.R. 684
6 Ibid at p. 690

within applications that were filed later than required[7]. In these decisions, the Ontario Energy Board was not simply considering circumstances wherein the rates applications were being filed mid-way through a year when new rates were being sought for the entire year (such as the case here) but rather that the utilities' tardy filings necessitated the making of an order after the proposed in-service date of the rates order sought.

50. AEY is not providing any benefit to ratepayers by ignoring what is happening in other jurisdictions by focusing its benchmarking efforts on utilities that are either related to them or utilities that are themselves not keeping up with regulatory precedents and best practices established in other jurisdictions. UCG submits that it is time that the regulation of Yukon utilities looks beyond its immediate borders in order to catch up to the standards being established and accepted in other jurisdictions.

51. In this case, AEY wishes to rely on Section 29 of the *Public Utilities Act*[8] to allow consideration of revenues and costs throughout the financial year in a way that allows the Board to give effect to an excess or deficiency if just and reasonable to do so[9]. The Board may also consider the matter of undue delay in making such decision[10].

52. UCG submits that it is essential that the language of the statute here be examined. Section 29 of the *Public Utilities Act* states the grounds for an exception not the grounds for a rule. It clearly does not provide a pass for all late applications given the passage associated with undue delay.

53. There is little to commend the approach of AEY in relation to the timing of this application. AEY seems heedless of the ratemaking principles challenged by the retroactivity, and the effect of seeking recovery of any deficiency in revenue requirement after the expenses have occurred and ratepayers have made decisions on how and when to use electricity based at least in part on the rates in effect at the time. In essence, AEY is submitting that it is more convenient to adequately assemble a rate application out of time than within the required time frame, and the fact that the Board always lets AEY file its rate applications well into the test year. UCG submits that any claimed regulatory efficiencies achieved by delaying filings to the Board are more than offset by additional costs incurred by intervenors and the Board and the unstable impacts on the bills of ratepayers.

54. UCG submits that holding off on filing rate applications until actual results for the year prior to the test period flies in the face of standard regulatory practice to classify the year prior to the test period as a "bridge" year and update the application (as required) for actual when they are known.

55. Given the prominence of AEY's Alberta-based witnesses during the oral hearing, UCG does not understand AEY's positioning on filing requirements given the minimum filing requirements for utilities in Alberta which govern the regulatory applications of its parent and affiliates. The minimum filing requirements of the Alberta Utilities Commission clearly state that the

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[7] OEB Decisions – EB-2008-0241 (June 1, 2009), EB-2008-0246 (July 10, 2009) and EB-2009-0177 (January 25, 2010)
[8] Revised Statutes of the Yukon, 2002, c. 186
[9] Ibid, sec. 29(b)
[10] Ibid, sec. 29(c)

information schedules of the components of revenue requirement are to be provided for a minimum of two years of actual results and any forecast years prior to the application in addition to the forecast test years of the application. UCG submits that this is standard industry practice in most jurisdictions. UCG submits that to suggest that there is a need to wait for actual results of the year immediately prior to the test years is simply an excuse to delay being tested on forecast test years and to delay completing the regulatory review such that the utility must live within a forecasted revenue requirement.

56. UCG submits that updates related to actual results are filed during regulatory proceedings in every jurisdiction and, while these actual results may persuade the utility to adjust some of its test year forecasts, regulators and interested parties typically use the updated numbers as a reference for argument and only require an opportunity to submit information requests on the updated information if there are significant changes to proposed programs and procedures. Any requirement for additional information is entirely dependent on how forthcoming the utility is with its impact analysis.

57. UCG submits that any perceived and non-quantified regulatory efficiencies are countered by deferring the recovery of the allowed test year revenue requirement until a subsequent year since this results in AEY recovering costs incurred in 2016 from customers in 2017 that did not incur the costs. Deferring the recovery of the allowed revenue requirement until a subsequent year also exposes AEY and ratepayers to the possibility of paying higher tax rates on those revenues than would have been paid in the year in which the associated costs were incurred.

58. Electricity rates need to accomplish two basic goals: impart information that helps consumers and investors make economic decisions about their consumption and investment decisions, and ensure that regulated utilities are given an opportunity to recover prudently incurred costs from those causing the costs to be incurred. UCG submits that utility rates to end-user customers should be designed to provide better price signals by better reflecting cost causation.

59. UCG submits that interim rates that are approved beginning in July 2016 do not begin to send the price signal associated with the revenue requirement that AEY sought to recover as part of this general rate application. UCG submits that the only price signal received by Yukon ratepayers in July was that “interim” means that higher rates will be retroactively applied.

60. UCG submits that cost causality should drive retail rate design approved by the Board. The “cost causer pays” rule says that costs should be assigned to customers so that the party that causes an incurred cost will pay for those costs when they are incurred. Failure to reflect cost causation in rates results in cross-subsidies, whereby some customers would subsidize other customers. UCG submits that the perpetual design of rates and rate riders to retroactively recover costs incurred in past consumption periods does not follow normal practices of fair rate making principles.

61. UCG submits that there appears to be a lack of management ability on the part of AEY to adhere to the expectations in every other jurisdiction in which regulators and stakeholders have opportunity to adequately review and test assumptions related to revenue requirements prior to their effective date. UCG submits that Yukon ratepayers should not continually be faced with

the instability and uncertainty associated with interim rate adjustment on top of interim rate adjustment that may or may not be retroactively changed in the future.

62. UCG suggests that this pattern of regulatory behaviour is unsatisfactory from a ratepayer perspective and continued acceptance by the Board at this juncture might be tantamount to an effective repeal of the well-recognized principle of avoidance of rate retroactivity. It is not reasonable to expect Yukon ratepayers to be burdened with retroactivity, no matter how the retroactivity is morphed into rates or bills.

63. UCG submits that once a 2016 revenue requirement is determined, AEY should, at a minimum, be denied recovery of revenue requirement associated with the 2016 rate year prior to the date of the first interim rate order. UCG submits that making new rates effective January 1, 2016 would constitute rate retroactivity and an unreasonable burden on Yukon ratepayers who could not know the cost of their electricity use decisions prior to the Board making a final decision on this application. UCG submits that AEY should not be allowed to retroactively recover revenues on approved final rates / rate riders. UCG submits that there should be a strong statement by the Board that rate retroactivity in the fashion desired here by AEY should be the exception and not the norm.

64. For additional clarity, UCG submits that there should be no recovery of any foregone revenue from January 1, 2016 to the date on which the Board approves rates following the compliance filing related to this application. This implies that the interim rate rider implemented July 1, 2016 would be replaced by any rate adjustment approved by the Board resulting from this application effective at the first of the month following approval of the compliance filing.

Lack of Consultation

65. AEY confirmed during oral testimony that most of its consultation related to this current application was based on a blend of contacts that arise out of the ordinary course of business (e.g., customers coming into the office for additional services, etc.) as well as special meetings or discussions that were convened for the purpose of discussing particular items with stakeholders or other groups (e.g., consultants, YEC, etc.)[11].

66. UCG submits that AEY did not conduct stakeholder consultations with ratepayers, municipalities and other interested parties on the contents of its general rates application prior to filing including proposals related to new policies contained within the application because it has not been a practice in the Yukon for either utility to initiate comprehensive, end-user consultation and engagement prior to filing an application with the Board.

67. AEY's testimony confirms that they do not understand the concept of stakeholder engagement. AEY testified that there is no need to discuss issues to be addressed in a GRA prior to it being filed.[12]

[11] Transcript Volume 1, November 1, 2016, starting at page 155
[12] Transcript Volume 1, November 1, 2016, page 155

68. While AEY's approach to its regulation does not surprise UCG, it ignores the fact that consultations are an important part of regulatory evolution and appears to require firm direction from the Board to meaningfully consult affected stakeholders prior to submitting applications to the regulator. Given the widespread acceptance in other jurisdictions of stakeholder consultations as applications are being developed, UCG submits that this is a normal principle to apply to the Yukon's regulatory processes.

69. UCG submits that the Board should not have to direct a regulated utility to consult and inform their applications with views from stakeholders directly impacted by the proposals, but the behaviour of the Yukon's utilities over the last several years implies that specific direction from the Board in this regard is needed. Without consultations, the utilities are encouraging a more confrontational approach to regulatory proceedings than is warranted. This, of course, puts under-resourced intervenors like UCG at a distinct disadvantage.

70. UCG submits that planning for an efficient and effective regulatory review of utility revenue requirements and rates should include comprehensive stakeholder input, not only in the review stages of a proposed filing, but also during the development of a filing. UCG submits that AEY was negligent in this regard, especially in regards to input from ratepayers.

71. UCG submits that the Board should direct AEY to evaluate and establish a consumer panel to run proposals by and get some feedback prior to formulating any future policies and proposals.

72. For the future, UCG submits that submissions related to revenue requirement and rates approval in the Yukon should be joint undertakings between AEY and YEC with input from government entities (e.g., the Energy Solutions Centre) and end-use stakeholders as opposed to a process that each entity undertakes on its own without regard for others. The timing of these submissions should be in advance of the test years for which they apply.

SALES AND REVENUE

73. In its application, AEY forecasts the total primary non-industrial sales in 2016 to decrease by 1.5% when compared to 2015 actual (on a weather-normalized basis) and then increase by 1.9% in 2017. This was updated in an undertaking response to a 1.2% decrease in 2016 and a 2.0% increase in 2017.[13]

74. Based on the data provided in the application, AEY has consistently realized sales that were below the approved amounts. UCG submits that this is in part due to AEY's forecasting methodology as well as under-estimating the impact of weather, the economy and DSM initiatives.

75. UCG has concerns that AEY's current forecast product, calculated retrospectively, but utilized prospectively, can have an impact on energy prices. The weather normalization process may

[13] Exhibit B-20

have a big impact on the determination of test year sales used in a rate proceeding because electricity service and revenues are weather-dependent. At the very least, AEY should have sought more input from stakeholders and other utilities on products that may be more representative of climate normals and current climate trends.

76. Given the downturn in the Yukon economy and the uncertainty created by a new territorial government, UCG submits that AEY has erred in simply applying the sales growth (reduction) rates experienced over the 2013-2015 period to derive the weather-normalized use per customer forecast for the 2016 and 2017 test years. UCG submits that the uncertainty of the longer-term impacts of DSM efforts and the ripple effect of a slower economy will have a greater impact on AEY's sales levels.

77. UCG submits that the Board must satisfy itself that AEY has used an appropriate industry standard methodology to assess energy requirements. The most significant factor for the Yukon is the lack of economies of scale. UCG submits that AEY must also do more extensive customer engagement to ensure that a more realistic picture is identified of the energy use plans of all customer types.

78. UCG is concerned that AEY's spending patterns are not matching the sales anticipated in 2016 and 2017. AEY's large capital and operating costs of providing electricity are spread across vast distances to a small population base. Before any resource planning is done and capital commitments made, UCG submits that the Board should ensure that stakeholders have an opportunity to provide meaningful input on a number of questions that need to be considered in developing a policy framework to guide AEY's sales forecasting as well as its generation, transmission and distribution resource development including:

- How do we manage energy development decisions to meet the Yukon's commitments to environmental stewardship, now and in the future?

- What is the most effective way to provide residents of the Yukon with equitable access to affordable and reliable electricity?

- What role should governments play in the energy sector, recognizing the unique nature of the Yukon environment?

- How do we foster an energy sector that is efficient and effective while maintaining public accountability and transparency?

79. In other jurisdictions (e.g., British Columbia), utilities are required to develop multiple resource portfolios for their demand forecasts, each consisting of a combination of supply and demand resources needed to meet the demand forecast. UCG submits that AEY must be directed to use the resources available to it to improve its forecasting abilities.

80. To the extent that industrial and or larger commercial loads make up part of AEY's load requirement, UCG submits that the needs of those loads must necessarily be treated separate and apart from AEY's non-industrial load. UCG submits that utility revenue volatility created by transient industrial loads in the Yukon is a significant issue.

81. UCG submits that AEY should use weather normalization for load forecasting as well as results reporting so that load variances resulting from weather can be isolated. UCG submits any disconnect between methods used for forecasting and results reporting causes confusion and uninformed decisions.

82. While AEY's application did not incorporate the impact of DSM programs[14], UCG submits that not only will these impacts need to be incorporated into the compliance filing, but AEY should be directed to ensure that impacts are not only included in forecasts going forward but also a full analysis is provided on how these impacts are determined.

83. The utilities have admitted previously that DSM is a mechanism, or suite of options for reducing, shifting or reallocating electrical demand. UCG submits that there is no evidence provided by AEY that their proposed DSM programs will do anything other than shift energy consumption rather than actually reduce it so factual claims to the contrary are not supportable.

Secondary Sales

84. AEY is forecasting that sales of secondary energy will dramatically increase in 2016 and 2017 by 34% over 2015. While this may be a Phase 2 issue, UCG is concerned that secondary sales customers are only paying an average of 5.5 cents per kWh while residential customers are paying 14.15 cents per kWh and commercial customers are paying 16.33 cents per kWh. While there have been ongoing rate adjustments implemented (with more proposed), secondary sales customers continue to enjoy a rate that hasn't been reviewed for many years.

85. UCG submits that commercial customers that are able to take advantage of the secondary sales program are being given an unfair advantage over their competitors. UCG submits that the Board should direct AEY to provide an evaluation of the customers that are taking advantage of larger amounts of secondary sales to ensure that all customers are being treated fairly and that everything is being done to ensure that benefits of the secondary sales program are being optimized.

86. UCG submits that it is not enough to simply use information from YEC for the determination of the secondary sales forecast. AEY must ensure that it understands and explains to the Board how this forecast is derived and what impact it has on other customers. UCG submits that AEY has not provided enough of this detail in order to justify the forecast included in the application.

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[14] Exhibit B-14 - AEY Interim Evaluation Report for 2015-2016 (October 31, 2016)

PURCHASED POWER

87. The percentage of electricity distributed by AEY and purchased from YEC in 2015 was 91.1% and is forecast to be 91.3% in the 2016 and 2017 test years.

88. UCG submits that while a deferral account is a reasonable way to track unforeseen changes in costs related to purchased power, UCG submits that AEY must ensure that it does as much as possible to limit the charges from YEC including actively participating in reviews of YEC revenue requirements and implementing DSM initiatives that reduce the need for purchased power.

89. AEY notes in its application that, consistent with Board Order 2009-2, they will continue to capitalize the incremental purchased power costs for decreased hydro supply resulting from capital builds and rebuilds at Fish Lake[15]. UCG submits that the incremental purchased power costs to be considered for capitalization should only be related to a planned capital project and not maintenance or projects that were not included in the capital budget reviewed by the Board.

FUEL COSTS

90. In its application[16], AEY notes that as a result of the conversion of the diesel units in Watson Lake to Bi-Fuel (diesel and LNG) beginning in the fall of 2017, generation will be based on a variable fuel mix of diesel and LNG. AEY has also requested approval of a deferral account to track and subsequently refund or recover changes in costs due to the differential in actual LNG fuel prices and the price included in rates.

91. AEY also states that the principles supporting a diesel price variance deferral are the same as those supporting a LNG price variance deferral or a fuel price variance deferral in general. Should the Board determine that the wording of the Rate Policy Directive OIC does not allow for the inclusion of LNG price variances to be included in the existing Rider F, AEY proposes that a new deferral account and subsequent Rider be approved that operates in the same manner as Rider F.[17]

92. Section 8 of the Rate Policy Directive (OIC 1995/090) states:

> *8. The Board must permit Yukon Energy Corporation and The Yukon Electrical Company Limited to adjust their rates to retail customers, major industrial customers, and isolated industrial customers so as to reflect fluctuations in the prices for which the two utilities pay for <u>diesel fuel</u>, without the requirement for specific application to, and approval from, the Board.*

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[15] Application page 3-1
[16] Application page 4-3
[17] UCG-AEY-22

93. The Fuel Adjustment Rider & Deferral Price Variance Policy (Rider F) was last approved by the Board in Order 2012-02 dated February 29, 2012. The Board confirmed in its Order 2011-15 that the Deferred Fuel Price Variance Account applies to all diesel fuel consumed in a period[18].

94. Despite the fact that the Fuel Adjustment Rider & Deferral Price Variance Policy clearly addresses only variances in diesel fuel (and not any type of equivalent), it is unclear whether AEY has actually applied to the Board regarding changing the Fuel Adjustment Rider & Deferral Price Variance Policy for the inclusion of LNG.

95. Given that AEY is not using LNG at this time and only anticipates using LNG-fuelled generators late in 2017 (at the earliest), UCG submits that the Board should not allow AEY to establish a LNG-related deferral account until a need is established and an application has been made to change the Fuel Adjustment Rider & Deferral Price Variance Policy.

96. UCG submits that the Board cannot approve the proposed Fuel Price Flow-Through Deferral Account and the proposed methodology for calculating the deferral for fuel used in Watson Lake without changing the Fuel Adjustment Rider & Deferred Fuel Price Variance policy and without having Section 8 of the Rate Policy Directive Order in Council 1995/90 changed to account for LNG.

OPERATIONS AND MAINTENANCE EXPENSES

97. UCG submits that Yukon utilities need to adopt an overall cost-conscious culture and follow a formal cost optimization program. AEY (and YEC) needs to devise new strategies to control rising costs and show the Board and other stakeholders that they are seriously working on limiting rate increases. In UCG's view, if AEY does not have a clear, defensible, systematic plan to manage operating costs, the Board should not approve requested increases in controllable revenue requirements.

98. UCG submits that the Board should carefully review the O&M variance analysis in Exhibit A-21. While no forecast will be perfect, UCG submits that there has been a pattern of over-forecasting and artificial inflation of rates in 2013-2015 with respect to O&M costs related to AEY's production facilities ($938,000) and over-spending on administration and general ($458,000). UCG submits that it is not enough to simply work within an overall O&M budget. AEY must be directed to focus on improving their forecasts and operations within specific O&M categories.

99. UCG submits that rather than just cutting costs, AEY should be directed to look at doing more with the same amount of money or doing the same with less. Some of this is necessarily basic, involving things like restricting travel or reducing training budgets, but AEY also needs to be directed to look at more impactful business-integrated programs, such as undertaking contract reviews, re-opening supplier negotiations or rationalizing one or more functions.

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[18] Board Order 2011-15, Appendix A: Reasons for Decision, page 6

100. At Schedule 5.3 in the application, AEY indicates actual affiliate charges included in O&M of $4.591 million between 2013 and 2015 versus an amount allowed to be recovered in rates of $6.081 million. Given this track record, UCG submits that the forecast amounts of affiliate charges for 2016 ($1.076 million) and 2017 ($1.108 million) should be reduced by 25%.

101. In response to CW-YECL-13(b), AEY provided details of the rapid escalation of the operating and maintenance cost per customer since their revenue requirements were last approved by the Board for 2014 and 2015 test years. The numbers clearly show that AEY has consistently incurred O&M expenses well in excess of the amounts allowed to be recovered in rates.

102. Of particular concern to UCG is the complete lack of control that AEY has displayed on its Administration and General expenses per customer which are still forecast to be as high in 2017 ($241.49) as they were in 2015 ($241.72) despite a nearly 3% increase in the number of customers. UCG submits that this shows no effort by AEY to reduce their actual level of O&M spending.

103. Given the fact the AEY sets its proposed operations and maintenance budgets based on a historical review, UCG submits that the Board should direct AEY to reduce O&M costs per customer by 10% in each of the test years and establish a clear plan of actions that will reduce these escalating costs.

104. UCG submits that the purpose of capitalizing administrative and general overhead as part of the total cost of a capital asset is to ensure that all costs associated with constructing a capital asset, including those related to administrative activities, labour, etc. are included. This allocation results in a better matching of the costs incurred with the timing of the benefits they generate. The amount of capitalized overhead will vary from year to year based on the mix of capital versus operating and maintenance activities undertaken and based on any changes to the methods used to allocate costs between activities.

105. UCG submits that AEY's overhead capitalization policy and implementation of that policy should be subject to an independent study to ensure that capitalized overhead is directly attributable to particular capital activities and that historical trends / industry practice are fully considered.

106. UCG submits that there is no evidence on the record justifying the skyrocketing allocation of affiliate costs to AEY. UCG submits that Financial Reporting and Regulatory Support related cost transfers from ATCO included in the test period revenue requirements should be capped at the level currently approved for recovery in rates.

107. UCG submits that the $109,700 added to AEY's Reserve for Injuries and Damages account in 2015 resulting from the Beaver Creek House Fuel Spill is not something that should be recovered from ratepayers. AEY's testimony[19] makes it clear that this fuel spill was clearly an

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[19] Transcript Volume 1 – November 1, 2016, starting at page 141

incident resulting from the actions of AEY's contractor. UCG submits that this cost should be covered by AEY's insurance coverage and / or its shareholder.

108. Similarly, the Fish Lake Ditch #1 Spillway Failure for which AEY is charging $100,000 to the Reserve for Injuries and Damages account should be recovered from AEY's shareholder. If the remote level monitoring of Ditch No.1 water levels is obtained in real time via SCADA and AEY staff do regular inspections, UCG submits that the damage caused by the failure is something that could have been prevented with proper monitoring.

TAXES OTHER THAN INCOME

109. In its application, AEY is forecasting property taxes paid to Yukon communities of $262,000 in 2016 and $267,000 in 2017.

110. AEY states in its application that property taxes are paid to the communities annually for office buildings, generation facilities, substation properties and power lines. The increases in the forecast of property taxes over the test period are due to inflation. Compared to 2015 actual property taxes $256,000), AEY is assuming a 2.3% inflationary increase for 2016 and an additional 1.9% for 2017.

111. In accordance with the legislation and mandate, the Property Assessment & Taxation Branch of the Yukon's Department of Community Services reviews and reassesses land and improvement values every two years. The market value of land is reviewed and any changes in value noted from market evidence may lead to a change in land value for property tax purposes. The cost to build is also reviewed and any changes noted in building costs from the time of the last reassessment may necessitate a change in the building property tax assessment.[20] AEY has not presented any evidence that the market value of its assets will be reviewed during the test years and any changes in value are expected.

112. Over the last 2 years, AEY has recovered an additional $31,000 in rates over the amounts required to be paid for property taxes.

113. UCG submits that AEY should not be granted any increase to property taxes for the test years given the over-collections since base rates were last set and the lack of evidence indicating that assessments and the resulting property taxes will actually increase during the test period.

DEPRECIATION

114. AEY is looking for approval of an updated depreciation expense supported by an internal technical update conducted without the assistance of a firm like Gannett Fleming.

[20] Frequently-Asked Questions about Property Assessment and Taxation, Property Assessment & Taxation Branch Web Site

115. AEY is requesting recovery of an increase in depreciation expense from $4.520 million in 2013, $5.52 million in 2014 and $5.778 million in 2015 (as approved) to $5.792 million in 2016 and $6.283 million in 2017. Not surprisingly, the allowed depreciation recovery incorporated in rates is higher than the depreciation expense actually booked by AEY ($4.382 million in 2013, $4.895 million in 2014 and $5.412 million in 2015). UCG submits that this amounts to an over-recovery of depreciation expense of $1,129,000 over the 2013-2015 period.

116. Given that AEY has already over-recovered $1,129,000 in depreciation, UCG submits that the requested $505,000 in additional depreciation recovery should be denied.

117. In its application, AEY states that they were proposing to "continue with the existing depreciation parameters for this Application's test period".[21] In fact, AEY states that the proposed annual increases in depreciation expense from 2013-2017 are due to growth in property, plant and equipment. UCG assumed that this meant that there was no change in the depreciation rates. However, in response to CW-YECL-19, AEY states that it has used in-house staff to conduct a "technical update" and recalculate depreciation rates. It wasn't until the interrogatory process that AEY actually explained how the new depreciation rates were developed.

118. UCG submits that any time depreciation rates are proposed to be changed, the applicant needs to provide details in its application about why the rates were being changed and how the new rates were calculated. While AEY testified that they didn't provide this information in the application because they haven't done so in the past, UCG submits that this simply reinforces the position that AEY assumes that Yukon ratepayers don't need to know everything about their operations.

119. On page 1-1 of its application, AEY lists the approvals requested. Nowhere on this list is a request to approve new depreciation rates. UCG submits that any application submitted to the Board should include a comprehensive list of approvals requested. Besides the over-recovery referenced above, UCG submits that the Board should deny the request to change depreciation rates due to a lack of supporting evidence and the lack of a formal request for approval.

120. UCG reminds the Board that in its last GRA, AEY requested approval for a deferral account to allow it to change depreciation parameters, as necessary, and flow-through the impact to customers of such changes during the 2013-2015 test period. AEY stated that the requirement to review its depreciation parameters annually and implement new depreciation rates if necessary was part of International Financial Reporting Standards (IFRS) [22]. According to AEY, the need for the deferral account was to account for new information or events.

121. The Board denied AEY's request for a deferral account on depreciation parameters stating:

"Based on the evidence of YECL, it can take several years to note material changes to depreciation parameters and to determine if such changes are an aberration or the start of a new trend. This analysis is likely to extend beyond the test period of any application provided by YECL. Further, the Board finds

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[21] Application, page 7-1
[22] AEY 2013-2015 GRA, Section 1, Attachment 2, Page 4 of 6

certain positions of YECL difficult to reconcile. On the one hand, YECL is perfectly willing to maintain a separate set of books and deviate from IFRS by including FRSR in depreciation rates, and yet argues that there is a burden to managing these books if a deferral account for depreciation parameters is not allowed. In addition, the use of such a deferral account does not comply with IFRS. The Board is of the view that to accept changes to depreciation parameters after a decision on the test period has been made would violate the prospective nature of rate-setting in Yukon."[23]

122. According to AEY, the intention of its requested Depreciation Parameters deferral account was, to the extent possible, to permit AEY to harmonize IFRS and regulatory accounting and avoid the administrative burden of keeping two sets of financial records[24].

123. AEY explained that changes to depreciation parameters that are not under its control include changes due to functional obsolescence or inadequacy, technological change, changing requirements of customers and market forces, customer growth, and legal and regulatory requirements. Specifically, AEY noted that net negative salvage can be affected by uncontrollable changes in technology in the removal of property, inflation, and changes in market demand and market prices which can affect salvage values[25].

124. It is UCG understanding that even before IFRS was implemented, Canadian Generally Accepted Accounting Principles (CGAAP) required entities to evaluate their asset useful lives annually and adjust them if necessary. UCG understands that, in practice, useful lives are not adjusted frequently as there would generally need to be new information that would trigger such a change. UCG submits that unless new information is presented, there shouldn't be a need to adjust depreciation rates.

CAPITAL STRUCTURE / COST OF CAPITAL

Capital Structure

125. The current capital structure of AEY provides for a 40% common equity ratio. This capital structure has prevailed following the past several determinations of the same by the Board in its Order 1993-8, Order 1996-6, Order 2009-2 and Order 2014-06. While AEY's consultant indicates that several jurisdictions recognize business risk within the equity thickness of the capital structure, AEY is seeking continuation of its currently approved common equity ratio for each 2016 and 2017.

126. UCG submits that AEY's current capital structure reflects its overall business risk including its ability to access capital markets through the ATCO group of companies. The riskier the firm, the more likely that capital markets will expect that it will be financed by higher levels of equity. Firms with low business risk are able to finance with greater debt and still have ready access to financial markets.

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23 Board Order 2014-06 – Reasons for Decision, page 47
24 AEY 2013-2015 GRA - YUB-AEY-1(c)
25 AEY 2013-2015 GRA - YUB-AEY-2

127. Business risk is comprised of many elements. For an electricity utility, these elements include the utility's related ability to attract customers and retain its customer base, which affect throughput levels and system load factors. Consumer sentiment, environmental considerations and government policy also play important roles in the determination of the utility's risk profile. These risk factors determine whether the utility will be able to recover its investments in rate base over time and affect its ability to achieve its allowed return.

128. Financing with debt reduces the revenue requirement of the utility. This is because equity shares carry a higher return than debt, and the cost of debt is deductible from the firm's income while the cost of equity is paid with after-tax income.

129. AEY's parent company, ATCO Ltd., maintains an "A" credit rating.

130. While AEY believes that it would have difficulty raising debt capital on a "stand-alone basis", this is largely speculative and there is no independent evidence from an expert in business risk and financial markets to that effect. Because debt capital is raised by AEY's parent company, ratepayers are not even assured of potentially lower interest rates on any debt arising from a reduction in business risk should there be a thickening of the equity ratio. It is also to be noted that the Board gave short shrift to this AEY approach in the Reasons for Decision of Order 2009-2[26].

131. In any event, there is no obligation on the part of the Board to maintain a particular credit rating. In fact, AEY has testified that they have never had a problem getting the capital to pay for whatever capital budget the company decides to pursue.[27]

132. The British Columbia Utilities Commission ("BCUC") in its Generic Cost of Capital Decision issued on May 10, 2013 noted[28]:

> *The Commission Panel will continue to be guided by the Fair Return Standard with its three tests of financial integrity, capital attraction and comparable return in determining an appropriate capital structure and ROE. The Panel supports the maintenance of an "A" category credit rating but only to the extent that it can be maintained without going beyond what is required by the Fair Return Standard.*
>
> *The Commission Panel finds that there is sufficient evidence to conclude that the maintenance of an "A" category credit rating is desirable, but not at all costs.*

133. The Ontario Energy Board's Report on Cost of Capital for Ontario's Regulated Utilities provided guidelines with respect to utility capital structure. The report on page 50 states[29]:

> *The Board has determined that a split of 60% debt, 40% equity is appropriate for all electricity distributors. Capital structure was not a primary focus of the consultation*

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26 Board Order 2009-2, Reasons for Decision, pages 26-27
27 Transcript Volume 1, November 1, 2016, pages 110-111
28 BCUC Generic Cost of Capital Decision – Stage 1 – May 10, 2013, page 50
29 AEY 2013-2015 GRA - Exhibit C3-10 – OEB Report on Cost of Capital for Ontario's Regulated Utilities, page 50

and the Board notes that the comments made by participants in the consultation largely supported the continuation of the Board's existing policy.

For electricity transmitters, generators, and gas utilities, the deemed capital structure is determined on a case-by-case basis. The Board's draft guidelines assume that the base capital structure will remain relatively constant over time and that a full reassessment of a gas utility's capital structure will only be undertaken in the event of significant changes in the company's business and/or financial risk.

134. The Ontario Energy Board noted in its Report on Cost of Capital for Ontario's Regulated Utilities that[30]:

"As noted in the Board's draft guidelines, capital structure should be reviewed only when there is a significant change in financial, business or corporate fundamentals."

135. In its Order 2009-2 – Reasons for Decision, the Board confirmed this approach when it indicated[31] :

"The Board is not convinced that the AEY situation or risk profile has changed since its last approved equity ratio for 1997[32] to warrant a substantial increase in the equity ratio."

136. UCG submits that linking AEY's return on equity to cost of capital formulas developed in other jurisdictions will reduce regulatory costs but should also warrant a review of the equity thickness of AEY's capital structure. UCG submits that AEY's equity thickness should be reduced to 37% to match the level established by the Alberta Utilities Commission for its benchmark utility (see more detail below).

Return on Equity

137. AEY is requesting to link its return on equity for the 2016-2017 test period to the recently approved BCUC Generic Cost of Capital benchmark rate of 8.75% plus a risk premium of 0.60%[33]. This results in a total requested return on equity of 9.35% for each of 2016 and 2017.

138. This equates to an increase in the return on equity component of the requested return on rate base of $395,000 (12%) in 2016 and an additional $277,000 (7.5%) in 2017.[34]

30 AEY 2013-2015 GRA - Exhibit C3-10 – OEB Report on Cost of Capital for Ontario's Regulated Utilities, page 49
31 Board Order 2009-2 – Reasons for Decision, page 27
32 Board Order 1996-6, page 11 of 17, Schedule 4B.
33 AEY applied for an additional of 60 basis points which is in the higher part of the 40 to 75 range identified by AEY's Concentric consultant. The range ignores the lower equity thickness of Alberta utilities established during the AUC's generic cost of capital proceeding.
34 AEY Application, Schedule 8.1

139. While the use of cost of capital formulas developed in other jurisdictions can be useful in avoiding the potentially time consuming and expensive process of determining cost of capital issues, UCG submits that tinkering with these formulas and cherry picking components of adjustment mechanisms should not be readily undertaken because of company-perceived differences. Even AEY's consultant testified that his own report was not an exact science.[35]

140. UCG submits that the rate of return on equity established by the utilities regulated by the Alberta Utilities Commission (8.3% in 2016 and 8.5% in 2017) are more current (i.e., October 2016) and relevant to the operations and governance of AEY since these rates apply to several of AEY's affiliates.[36]

141. In this Board's Decision on AEY's 2013-2015 General Rates Application, the robotic application of a 46 basis point rate premium over the British Columbia benchmark ROE was rejected, with the Board noting that YECL had not established a prima facie case to quantify a risk premium over the BCUC benchmark utility[37]. In UCG's view, this same principle applies in relation to the use of elements of previous decisions from the same jurisdiction.

142. While AEY has applied to continue determining rates based on its currently approved common equity ratio of 40% for each 2016 and 2017, UCG notes that the current benchmark ROEs of 8.3% (2016) and 8.5% (2017) established by the Alberta Utilities Commission apply to ATCO Electric Distribution (AEY's affiliate) assumes a 37% equity ratio with no provision for an add-on risk premium.

143. UCG submits that given that AEY has been realizing excess returns for several years, they have not completed an analysis of the risk-reducing nature of its deferral accounts[38] and there has been no evidence presented by AEY to justify a difference in risk from the benchmark utility in Alberta, AEY should only be entitled to equity thickness corresponding to the benchmark return level for its affiliate (i.e., 37%). While AEY's own witnesses have views regarding the risk impact of deferral accounts[39], these views are not from experts in the field of utility risk evaluation and should be ignored.

144. In its Order 2009-2, with the benefit of up to date business risk evidence, the Board made a careful determination of AEY's business risk. Nowhere in that decision is there reference to maintenance of a differential capital equity ratio with the BCUC benchmark. It is noted that:

> *"The Board accepts the argument from CW that based on the equity ratio proposed by AEY the FFO[40] interest-coverage ratio is higher than that for other Canadian transmission or distribution utilities. The Board also accepts CW's argument that AEY has not satisfied the Board that AEY's business risks are higher than those of a typical distribution or transmission utility."*

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[35] Transcript Volume 1 – November 1, 2016, page 48
[36] Transcript Volume 1 – November 1, 2016, pages 40-41
[37] Board Order 2014-06 – Reasons for Decision, page 51
[38] Transcript Volume 1 – November 1, 2016, page 81
[39] Transcript Volume 1 – November 1, 2016, page 81
[40] FFO – Funds From Operations

145. UCG also notes that AEY's response to UCG-AEY-30(g) identifies the returns on equity actually achieved by AEY resulted in excess earnings since 2010 of over $1 million:

	Allowed ROE	Actual ROE	Excess Earnings
2010	8.93%	10.63%	$352,000
2011	8.93%	10.74%	$393,000
2012	8.93%	10.18%	$305,000
2013	8.93%	10.78%	$527,000
2014	8.75%	8.85%	$33,000
2015	8.75%	7.40%	($500,000)
Total:			**$1,110,000**

146. UCG submits that AEY has been consistently achieving earnings well in excess of the allowed return on equity which includes the risk premium bonus. UCG submits that it is time to recognize that any risk premium is unnecessary in the Yukon and that it is time to introduce an earnings sharing mechanism so that ratepayers will get their over-payments back. Since an earnings sharing mechanism also provides an incentive for AEY to introduce more efficiencies, it can yield benefits over and above the recalibration of over-earnings to yield a more equitable result.

147. As a comparison, UCG submits that YEC's capital structure has been set by Board Order 2013-01 at 40% common equity with an ROE of 8.75% effective January 1, 2012. YEC's cost of capital was based on the most recent Alberta Utilities Commission Cost of Capital Decision and the comparison with the utilities referenced therein.

148. Given AEY's connection to Alberta utilities and the fact that YEC's return was established using the Alberta benchmark, UCG submits that the Board should establish AEY's capital structure with a 37% equity component with a related return on equity equal to the 8.3% for 2016 and 8.5% for 2017 established as the Alberta Generic Cost of Capital benchmark.

149. UCG also notes that despite the extraordinary cost of the Concentric consultant, his testimony was lean on examples from his vast experience of preparing similar advice where a regulator actually agreed with his recommendation. Based on the cases identified in Mr. Coyne's CV, his advice regarding equity thickness and rate of return have been considered on the high side by regulators.

150. UCG also notes that the Concentric consultant testified that he was focused on British Columbia to find comparable utilities to AEY because AEY had decided to pursue the higher returns of the BCUC Generic Cost of Capital review.[41] UCG submits that the results of Concentric's comparative analysis are lacking value because of a failure to include a comprehensive comparison with the Alberta benchmark.

[41] Transcript Volume 1 – November 1, 2016, pages 76-77

Cost of Debt

151. AEY is forecasting to issue long term debt in the test period. Based on discussions with ATCO's Treasury Department, AEY has used an average Long Canada Bond Rate and applied a spread to determine the forecast debenture rate.

152. In its Order 2013-01, the Board adopted an historical formulaic approach (120 basis points above long-term Canada bonds) for forecasting future costs of debt for YEC. The Board agreed with intervenors that such an approach creates a simplification which reduces the regulatory burden and brings the cost-of-debt approach congruent with YEC's approach for ROE.

153. AEY has not provided any expert advice regarding its proposed cost of debt.

154. UCG submits that the same formulaic approach (120 basis points above long-term Canada bonds) for forecasting future costs of debt for YEC should be used for AEY so that Yukon ratepayers are not burdened with additional interest fees related to the financial paper shuffling among AEY and its affiliates. Consistency in the Board's approach to the Yukon's utilities would add to the understandability of the regulatory process.

155. Notwithstanding AEY's apparent high degree of confidence in the accuracy of their forecast, UCG suggests that the long term Canada rate is largely a matter of speculation as well as the actual rates that the market will demand when the debt issue may occur. UCG submits that the Board must also be aware of the fact that AEY has some ability to control the date of issuance to garner a favourable rate.

CAPITAL EXPENDITURES / ADDITIONS

156. UCG submits that while AEY is entitled to rates sufficient to provide AEY with an opportunity to earn a reasonable rate of return upon the value of the property used, at the time it is being used, to render the service, AEY is not entitled to have included any property not used and useful for that purpose or any costs that AEY has not proven were incurred prudently.

157. Since utilities are inherently capital intensive, seeking opportunities to satisfy growth and infrastructure sustainment business needs with less capital investment creates cost efficiency. This may be a challenge for some organizations where "growing the rate base" is viewed as a benefit for shareholders.

158. Prudent investment is the original proposed cost minus any fraudulent, unwise, or extravagant outlays that should not be a burden on ratepayers. "Prudent" imports the requirement that the investment, in order to gain recognition in the rate base, must have been prudently incurred in the light of foresight rather than of hindsight. UCG submits that the onus is on AEY to prove that its capital expenditures are prudent and not the job of intervenors to prove that they were not prudent.

159. A long-standing principle of regulatory law has been that an investment must be "used and useful" for the provision of public service before the public should be asked to bear its cost.

160. UCG is concerned with the significant expenditures over approved budgets for many of the capital projects that have received previous approvals from the Board. AEY has previously testified that when AEY submits its capital expenditures and capital project budgets to the Board for approval in a general rates application, their cost estimates are based on a 100% confidence level[42]. The list of projects with over-expenditures is lengthy but worth review by the Board to ensure that ratepayers are only paying costs that have been proven to have been prudently incurred. If there is no evidence that these extra costs were prudently incurred, they should not be allowed to be added to AEY's rate base.

161. UCG submits that additions to AEY's rate base should be limited to allowed cost estimates since approvals are granted based on the value that these projects will have to ratepayers which in turn is based on the cost forecast and the associated impact on rates. UCG submits that, while some of the cost overruns are referenced later in this argument, AEY should not be allowed to add cost overruns to rate base unless they can provide evidence that the overrun costs were prudently incurred. UCG submits that cost overruns caused by poor planning or lack of consultation were not prudently incurred and should not be recovered from ratepayers.

162. UCG also submits that AEY should not be able to arbitrarily add capital projects to rate base that have not been previously approved by the Board. UCG submits that the onus is on AEY to clearly explain and defend all of the capital expenditures that have been made on projects that have not been specifically approved by the Board. UCG submits that this has not been the case in the current application but it must be a condition of any approvals given by the Board.

163. UCG is concerned with the rapid increase in AEY's rate base that has driven by their over-forecasted capital budget. As shown in Schedule 8.1, AEY's rate base has increased from $70.602 million in 2013 to $92.995 million in 2015 (a 32% increase in 2 years). AEY is forecasting its rate base to increase another 13% over the 2016 and 2017 test years which adds to AEY's profit margin. UCG submits that Yukon ratepayers cannot be continually held responsible for AEY's poor forecasting and project execution.

164. UCG submits that there is a great deal of uncertainty regarding how AEY establishes its capital expenditures plan which makes it difficult for intervenors to determine best practices that AEY should address.

165. UCG submits that AEY (and YEC) should be required to submit detailed asset management plans and/or distribution system plans that include the utility's asset management policy, strategy and objectives; an inventory and assessment of the condition of all capital assets whose net book value is material to the utility; and how this inventory informs the utility's plan for capital expenditures and plan for maintenance expenditures. The asset management plan should demonstrate how these elements produce an integrated capital investment, asset maintenance and asset retirement plan that will drive the development of investment and maintenance for the test year(s) and beyond.

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[42] AEY 2013-2015 GRA - Transcript Volume 2, November 5, 2013, pages 293-294

Deferred Study Costs

166. AEY has proposed including deferred charges of $601,000 in 2016 rate base and $388,000 in 2017 rate base.

167. According to the *Public Utilities Act*:

32(1) The board, by order, shall determine a rate base for the property of a public utility used or required to be used to provide service to the public, and may include a rate base for property under construction, or constructed or acquired, and intended to be used in the future to provide service to the public.

168. UCG submits that the "used or required to be used" language in the Act prohibits AEY from earning a return on costs that were never included within a capital project. No utility property can be deemed used and useful until it is providing actual utility service to the customers.

169. UCG submits that prudence is not at issue when a statutory prohibition is applied. AEY's quid pro quo for its obligation to serve was monopoly status, not risk-free investments. UCG submits that prudent investments that never provide service should be excluded from the rate base calculations.

170. UCG submits that amortization of prudently incurred project development costs over a period of years should be done without placing the balance in the rate base thereby allowing a return of, but not on, the investment. In this manner, investors and ratepayers share the burden of project cancellation costs.

171. UCG submits that in many cases, a regulator may determine that utilities cannot recover certain cost components or require that losses be offset by any resulting savings. If an investment is prudent, wouldn't it be considered used and useful and thus treated as rate base? UCG submits that no costs associated with rate base should be recoverable and earn a return before an asset is fully operational and used for service.

172. In its Order 2013-01, the Board determined that feasibility expenditures associated with projects deemed to be feasible should remain in Work in Progress until such time that the project is set aside or the utility comes before the Board for a prudence review. In its Order 2014-06, the Board determined that all Watson Lake bi-fuel project study costs would be held in Work in Progress until such time as the project may be completed.

173. UCG submits that if the Board accepts the proposed Watson Lake Bi-Fuel project proposed by AEY, then the $494,000 in Watson Lake Study Costs should be rolled into the capital costs of that project and recovered over the life of the Watson Lake Bi-Fuel project. AEY has already agreed that this is a legitimate treatment of these costs.[43]

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[43] November 9, 2016 Response to Undertaking Taken at Page 457, Lines 18-22

174. UCG submits that all other deferred study costs should be removed from rate base and held in Work in Progress until the Board criteria have been met.

Distribution Plant Additions

175. In its application[44], AEY shows actual distribution plant additions of $19.736 million between 2013 and 2015 versus an amount allowed to be recovered in rates of $31.051 million. UCG submits that ratepayers have paid the costs of $11.315 million in forecast distribution plant additions that never took place within these test years.

176. Given this most recent track record of over-estimating the work that will actually be completed, UCG submits that the distribution plant additions forecast for 2016 ($7.659 million) and 2017 ($8.994) should be reduced by 40%.

McIntyre Subdivision - Replacement Stage 1

177. In its 2013-2015 Project Post Completion Summary, AEY indicates that the first stage of the McIntyre Subdivision project was to replace the underground electrical system. AEY's evidence is that this project went well beyond the Board approved level because the location and installation of the existing underground system would be in constant conflict with the installation of the new system. This along with other issues resulted in a requirement to develop an entirely new project scope. This resulted in AEY incurring an additional $728,000 in costs (for a project originally assumed to cost $725,000) and doubling the cost of the project.

178. In its Board Order 2009-8 (page 37), the Board directed the following:

"Further, in future GRA applications, the Board directs YEC to include business cases for major capital items, including electronic models. Business cases will include:

- *descriptions of the project*
- *economic analysis including preliminary engineering estimates*
- *discussion of alternatives and how the chosen option was determined*
- *discussion of the risks of proceeding with the chosen alternative*
- *discussion of risks of not proceeding with the chosen alternative; and*
- *discussion of assumptions included in the business case including escalation factors, loading, financial measures, term of project and associated ancillary costs."*

179. When this project was included in the business cases with AEY's 2013-2015 GRA (#22), it was portrayed as a project designed to replace end of life equipment for safety reasons. Parties to the 2013-2015 GRA proceeding were convinced by AEY at that time that they knew what they were doing and they were the experts on how to design and maintain their distribution system.

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44 Application – Schedule 9.1

180. UCG submits that this project puts into question AEY's ability to accurately forecast new development requirements and highlights the inefficiencies that are inherent in the construction planning and work undertaken by AEY. UCG also disagrees that today's customers should have to pay for an overbuild of a system if AEY is assuming that customer growth will need it. Ratepayers should only have to pay for a system that is used and useful to supply their needs and not the speculations of AEY on what may be needed in the unforeseen future. AEY can't even explain why the total peak load for Whitehorse fluctuates from year to year.[45]

181. UCG submits that AEY's proposal to upgrade the voltage to 25 kV was ill-conceived, poorly planned and haphazardly executed. AEY used inaccurate forecasting of population growth for new extensions in this area and used poor planning to determine the underground cable requirements that couldn't handle the growth.

182. UCG submits that the planning errors that resulted in doubling the cost of the project should be the responsibility of AEY not ratepayers. These costs overruns were well within the control of AEY and its planning efforts. UCG submits that it was AEY's poor planning that resulted in unforeseen expenditures. UCG also submits that there is inadequate evidence to prove that the cost overruns were prudently incurred and that is the responsibility of AEY to prove.

McIntyre Subdivision - Replacement Project Update

183. AEY estimates the total cost of this project to be approximately $5.129 million and has applied to the Board for approval to add it to rate base.

184. UCG submits that the Board made it clear in its January 2007 Report to Commissioner in Executive Council re YEC's 20-Year Resource Plan that, given the smaller rate base in the Yukon compared to many Canadian utilities, and given the relatively small number of ratepayers in the Yukon, a $1 million threshold would be appropriate for capital expenditures to be reviewed by the Board pursuant to Part 3 of the *Public Utilities Act*.

185. AEY has confirmed that it considers any capital project costing $500,000 or more a "major capital project". If $500,000 is the threshold for a major project, then UCG submits that any project that is well over the $1 million threshold should be reviewed as part of a significantly more comprehensive review process than is afforded within a general rates application.

186. If the Board is not prepared to ensure that significant projects like this are given the attention of a Part 3 review by not allowing them into rate base until a thorough prudency review is conducted, then Yukon ratepayers will continue to pay for the self-serving decision-making practices of the utilities.

187. UCG submits that the McIntyre Subdivision – Replacement Project Update should be subjected to a Part 3 review before any consideration is given to adding it to AEY's rate base.

[45] Transcript Volume 1, November 1, 2016, page 135

Watson Lake Bi-Fuel Project

188. AEY estimates the total cost of the three-year project to be approximately $4.97 million and has applied to the Board for approval of $3.26 million to implement Phase 1 of the project.

189. UCG submits that the Board made it clear in its January 2007 Report to Commissioner in Executive Council re YEC's 20-Year Resource Plan that, given the smaller rate base in the Yukon compared to many Canadian utilities, and given the relatively small number of ratepayers in the Yukon, a $1 million threshold would be appropriate for capital expenditures to be reviewed by the Board pursuant to Part 3 of the *Public Utilities Act*.

190. AEY has confirmed that it considers any capital project costing $500,000 or more a "major capital project". If $500,000 is the threshold for a major project, then UCG submits that any project that is well over the $1 million threshold should be reviewed as part of a significantly more comprehensive review process than is afforded within a general rates application.

191. If the Board is not prepared to ensure that significant projects like this are given the attention of a Part 3 review by not allowing them into rate base until a thorough prudency review is conducted, then Yukon ratepayers will continue to pay for the self-serving decision-making practices of the utilities.

192. UCG submits that the Watson Lake Bi-Fuel project should be subjected to a Part 3 review before any consideration is given to adding it to AEY's rate base.

Watson Lake Unit #2 Replacement

193. AEY estimates the total cost of this project to be approximately $1.39 million and has applied to the Board for approval to add it to rate base.

194. UCG submits that the Board made it clear in its January 2007 Report to Commissioner in Executive Council re YEC's 20-Year Resource Plan that, given the smaller rate base in the Yukon compared to many Canadian utilities, and given the relatively small number of ratepayers in the Yukon, a $1 million threshold would be appropriate for capital expenditures to be reviewed by the Board pursuant to Part 3 of the *Public Utilities Act*.

195. AEY has confirmed that it considers any capital project costing $500,000 or more a "major capital project". If $500,000 is the threshold for a major project, then UCG submits that any project that is well over the $1 million threshold should be reviewed as part of a significantly more comprehensive review process than is afforded within a general rates application.

196. If the Board is not prepared to ensure that significant projects like this are given the attention of a Part 3 review by not allowing them into rate base until a thorough prudency review is conducted, then Yukon ratepayers will continue to pay for the self-serving decision-making practices of the utilities.

197. UCG submits that the Watson Lake Unit #2 Replacement project should be subjected to a Part 3 review before any consideration is given to adding it to AEY's rate base.

Downtown Whitehorse Capacity Improvement

198. AEY estimates the total cost of this project to be approximately $1.823 million and has applied to the Board for approval to add it to rate base.

199. UCG submits that the Board made it clear in its January 2007 Report to Commissioner in Executive Council re YEC's 20-Year Resource Plan that, given the smaller rate base in the Yukon compared to many Canadian utilities, and given the relatively small number of ratepayers in the Yukon, a $1 million threshold would be appropriate for capital expenditures to be reviewed by the Board pursuant to Part 3 of the *Public Utilities Act*.

200. AEY has confirmed that it considers any capital project costing $500,000 or more a "major capital project". If $500,000 is the threshold for a major project, then UCG submits that any project that is well over the $1 million threshold should be reviewed as part of a significantly more comprehensive review process than is afforded within a general rates application.

201. If the Board is not prepared to ensure that significant projects like this are given the attention of a Part 3 review by not allowing them into rate base until a thorough prudency review is conducted, then Yukon ratepayers will continue to pay for the self-serving decision-making practices of the utilities.

202. UCG submits that the Downtown Whitehorse Capacity Improvement project should be subjected to a Part 3 review before any consideration is given to adding it to AEY's rate base.

Old Crow Unit #3 Replacement

203. AEY estimates the total cost of this project to be approximately $1.262 million and has applied to the Board for approval to add it to rate base.

204. UCG submits that the Board made it clear in its January 2007 Report to Commissioner in Executive Council re YEC's 20-Year Resource Plan that, given the smaller rate base in the Yukon compared to many Canadian utilities, and given the relatively small number of ratepayers in the Yukon, a $1 million threshold would be appropriate for capital expenditures to be reviewed by the Board pursuant to Part 3 of the *Public Utilities Act*.

205. AEY has confirmed that it considers any capital project costing $500,000 or more a "major capital project". If $500,000 is the threshold for a major project, then UCG submits that any project that is well over the $1 million threshold should be reviewed as part of a significantly more comprehensive review process than is afforded within a general rates application.

206. If the Board is not prepared to ensure that significant projects like this are given the attention of a Part 3 review by not allowing them into rate base until a thorough prudency review is

conducted, then Yukon ratepayers will continue to pay for the self-serving decision-making practices of the utilities.

207. UCG submits that the Old Crow Unit #3 Replacement project should be subjected to a Part 3 review before any consideration is given to adding it to AEY's rate base.

Whistle Bend Subdivision - Stage 3C

208. AEY estimates the total cost of this project to be approximately $1.53 million and has applied to the Board for approval to add it to rate base.

209. UCG submits that the Board made it clear in its January 2007 Report to Commissioner in Executive Council re YEC's 20-Year Resource Plan that, given the smaller rate base in the Yukon compared to many Canadian utilities, and given the relatively small number of ratepayers in the Yukon, a $1 million threshold would be appropriate for capital expenditures to be reviewed by the Board pursuant to Part 3 of the *Public Utilities Act*.

210. AEY has confirmed that it considers any capital project costing $500,000 or more a "major capital project". If $500,000 is the threshold for a major project, then UCG submits that any project that is well over the $1 million threshold should be reviewed as part of a significantly more comprehensive review process than is afforded within a general rates application.

211. If the Board is not prepared to ensure that significant projects like this are given the attention of a Part 3 review by not allowing them into rate base until a thorough prudency review is conducted, then Yukon ratepayers will continue to pay for the self-serving decision-making practices of the utilities.

212. UCG submits that the Whistle Bend Subdivision - Stage 3C project should be subjected to a Part 3 review before any consideration is given to adding it to AEY's rate base.

Fish Lake Ditch 3 Diversion Replacement

213. AEY estimates the total cost of this project to be approximately $3.049 million and has applied to the Board for approval to add it to rate base.

214. UCG submits that the Board made it clear in its January 2007 Report to Commissioner in Executive Council re YEC's 20-Year Resource Plan that, given the smaller rate base in the Yukon compared to many Canadian utilities, and given the relatively small number of ratepayers in the Yukon, a $1 million threshold would be appropriate for capital expenditures to be reviewed by the Board pursuant to Part 3 of the *Public Utilities Act*.

215. AEY has confirmed that it considers any capital project costing $500,000 or more a "major capital project". If $500,000 is the threshold for a major project, then UCG submits that any project that is well over the $1 million threshold should be reviewed as part of a significantly more comprehensive review process than is afforded within a general rates application.

216. If the Board is not prepared to ensure that significant projects like this are given the attention of a Part 3 review by not allowing them into rate base until a thorough prudency review is conducted, then Yukon ratepayers will continue to pay for the self-serving decision-making practices of the utilities.

217. UCG submits that the Fish Lake Ditch 3 Diversion Replacement project should be subjected to a Part 3 review before any consideration is given to adding it to AEY's rate base.

Fish Lake System Expenditures

218. Since 2006, AEY has spent $11.429 million in capital and $1.96 million in O&M. Over that time period, AEY has recovered $5.87 million in revenue requirement from ratepayers[46]. AEY is now looking to spend over $3 million on the Fish Lake Ditch 3 Diversion Replacement project and $593,000 on the Fish Lake #2 Head Pond Spillway Replacement project.

219. UCG submits that, given the limited amount of total load supplied through the Fish Lake plant, it is questionable whether spending this level of funds on a deteriorating plant is providing ratepayers for any value for their money.

220. UCG submits that the perceived benefit to the Fish Lake plant is not worth this level of investment.

Meters

221. In its application, AEY identifies Replacement of Meters and New Installations as a single line item with actual expenditures in 2013-2015 ($708,000) well below the approved capital expenditure levels which have been incorporated into rates. UCG submits that this significant over-forecasting trend should be used to reduce the budget proposed for 2016 and 2017.

222. AEY testified that all the meters that are purchased for use in the Yukon are procured through ATCO Electric's meter shop in Grande Prairie[47]. UCG submits that there should be clarification on how this arrangement was determined to be the least cost alternative supply point and whether the affiliate relationship has been used to provide benefits to the ATCO family of companies.

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46 UCG-AEY-2

47 Transcript Volume 2, November 2, 2016, page 258

DEMAND SIDE MANAGEMENT

223. In its Order 2014-06, the Board approved program elements of AEY's residential non-government DSM portfolio that pass all of the cost-effectiveness measures for 2014 and 2015. Further, the Board directed AEY to make a formal application to the Board before expanding the DSM program elements beyond what was approved for 2015.

224. There are no DSM-related costs included in AEY's 2017 revenue requirement forecast because the Board approved DSM program will be finished in 2016.[48]

225. In their 2013-2018 DSM plan, AEY and YEC estimated the avoided costs of new generation resulting from the DSM plan at $1.95 million. UCG submits that coupled with the benefits of reduced energy use by ratepayers, these cost reduction benefits should have warranted AEY coming forward with a plan to extend their DSM program beyond 2015.

226. There has been no evidence that AEY and YEC have been discussing a new DSM plan.

227. UCG submits that AEY should be directed to bring forward a new DSM plan following discussions with stakeholders.

228. AEY is proposing to move the costs related to the approved DSM program out of the deferred account into capital and recover these costs over a 5-year term. UCG questions why these costs would be treated as a capital item and attract carrying costs like assets placed into rate base. UCG submits that the deferred DSM costs should not be treated as a capital asset because AEY is only entitled to the return of, not a return on, prudently incurred DSM costs.

QUALITY OF SERVICE

229. AEY states in in application that System Performance Projects are required to maintain system performance at an acceptable level and that this category of capital project includes system protection, voltage, current and line clearance projects.[49] AEY goes on to say that it tracks distribution system performance on an ongoing basis and the performance is reviewed when preparing the capital forecast.[50]

230. Although distribution costs for system improvements increased an average of $3.75 million per year from 2010-2015[51] and AEY wants to increase this expenditure to $4.346 million in 2016 and $4.178 million in 2017[52] but has provided no evidence of expected system performance improvements with respect to line losses and interruption indices. UCG submits that AEY should be denied any increase in distribution improvements expenditures in 2016 and 2017 since no evidence has been provided which demonstrates a benefit to customers.

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48 UCG-AEY-33(b)
49 Application, page 9-2
50 Application, page 9-3
51 UCG-AEY-35
52 Application Attachments 9.1 and 9.2

231. UCG submits that without an established benchmark, the Board and ratepayers cannot determine how well AEY is actually performing with respect to SAIFI (System Average Interruption Frequency Index), SAIDI (System Average Interruption Duration Index) and CAIDI (Customer Average Interruption Duration Index) reliability performance indices. UCG submits that the Board should establish performance and reliability benchmarks and AEY should be directed to report its actual performance against these benchmarks.

232. UCG submits that AEY's reliability performance measures should include customer-specific reliability measures (e.g., customers experiencing multiple interruptions) as well as ways to monitor momentary outages which are a significant issue for Yukon residences and business.

COST OF SERVICE – DISALLOWED COST RECOVERY

233. Over the last few years, the Board has disallowed AEY from recovering $175,642.46 in costs it has claimed in various regulatory proceedings.

> Reference – Board Order 2014-11 (August 5, 2014) - The Board disallowed $53,164.75 in legal and consultant costs claimed by AEY related to the review of AEY's 2013-2015 GRA.
>
> Reference – Board Order 2013-08 (September 13, 2013) - The Board disallowed $4,096.33 in legal costs, affiliate services costs and disbursements claimed by AEY related to the review of YEC's 2012-2013 GRA.
>
> Reference – YUB Order 2011-08 (June 28, 2011) - The Board disallowed $86,068.45 in legal costs, affiliate services costs and disbursements claimed by AEY related to the review of the AEY / YEC 2009 Joint Phase II Rate Application.
>
> Reference – YUB Order 2009-06 (May 28, 2009) - The Board disallowed $85,477.71 in legal costs, consultant fees, affiliate services costs and disbursements claimed by AEY related to the review of the AEY 2008/2009 Revenue Requirements Application.

234. AEY testified in the last GRA that the hourly rates claimed through the Board's cost claim process for the last few years for legal counsel and outside consultants were not the actual rates charged to and paid by AEY for these services. AEY confirmed that they paid higher hourly rates than the awarded costs as part of the regulatory proceedings[53]. UCG submits that AEY should clearly identify in its compliance filing all costs incurred in regulatory proceedings that are higher than amounts the Board allows to be recovered. This includes costs related to legal and consultant rates that are above the rates approved by the Board as reasonable to be recovered from ratepayers.

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[53] AEY 2013-2015 GRA - Transcript Volume 2, November 5, 2013, page 356

235. In response to Undertaking #21 in the last GRA[54], AEY testified that, for the historical years 2008-2012, AEY has coded all disallowed and unrecoverable regulatory costs incurred into account 72200 as indicated in response to CW-AEY-10(d) in the amounts of $120,000 in 2009, $142,000 in 2010 and $103,000 in 2012.

236. AEY testified that these unrecoverable regulatory fees and costs were expensed but were not recovered in rates. UCG submits that for its compliance filing, AEY should be directed to submit a financial schedule clearly showing the itemized detail on where these unrecoverable regulatory costs have been recorded such that they are not included in rates. UCG submits that there has not been a clear explanation provided on exactly how much regulatory costs AEY has incurred that is not recoverable in rates. Without this detail, UCG submits that the Board and intervenors cannot verify that ratepayers are not paying for costs being incurred on behalf of AEY's shareholder.

RATE IMPACTS AND MITIGATION

237. AEY has requested approval of revenue requirements which AEY claims will result in year-over-year rate increases of 4.4% in 2016 and 3.1% in 2017 for a cumulative impact of 5.1% after netting out fuel cost reductions[55].

238. UCG submits that even if there are no other rate adjustments approved within the next few months, Yukon ratepayers are saddled with a significant increase in their electricity bills this winter when consumption is highest. UCG submits that affordability issues are a significant concern that will not only impact residential ratepayers but also adversely impact potential business expansion and the Yukon economy.

239. In its Order 2016-02 dated June 24, 2016, the Board approved an interim, refundable rate adjustment of 9.41% (Rider R) for all customers effective July 1, 2016.

240. AEY confirmed that the monthly bill in January 2016 for a residential customer using 1000 kWh would be $127.93 (including GST) or 11% lower than the bill in January 2014 ($144.24 after Rebate) and 8.7% lower than the bill in January 2015 ($140.14 after Rebate)[56]. What this indicates is that AEY has been over-recovering from Yukon ratepayers and are trying to make it appear as though rates are being reduced because of something they have done to lower costs.

241. UCG submits that AEY is presenting these bill impacts showing year-over-year bills and not the instantaneous rate changes that would determine whether ratepayers would experience rate shock. UCG submits that Yukon ratepayers, both residential and commercial, budget for the costs of their electricity use on an annual basis so it doesn't matter from a rate shock perspective what happens to the overall bill between say June and July (when consumption is

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[54] AEY 2013-2015 GRA - Transcript Volume 2, November 5, 2013, pages 365-366
[55] AEY 2016-2017 GRA, Application Cover Letter and Application page 1-3
[56] AEY Response to UCG-AEY-16(a), Attachment 1

lower) or September and October but it does matter what happens to the annual cost of electricity from year to year.

242. In response to UCG-AEY-16(d), AEY states that its position has been, and continues to be, that if a bill increase at a point in time (month over month) exceeds 10%, mitigation methods can be employed to address rate shock. UCG submits that AEY is out of touch with what its customers consider when it comes to the cost of electricity. While the month-to-month increase in rates may be less than 10%, the longer term impact of a series of rate adjustments during a year can be significant. UCG submits that any year-over-year increase in bills that are 10% or higher would indicate that rate shock was taking place.

243. UCG submits that AEY should be directed to not only address bill mitigation but to develop and implement a policy as part of the next GRA proceedings.

244. Despite the fact that affordability has always been an important issue in the Yukon, AEY has not provided any evidence that it is currently working with any social agencies to address the needs of low income Yukoners nor does AEY appear aware of any low income assistance programs that exist in other jurisdictions.

245. UCG submits that AEY should be directed to address the difficulties faced by low income ratepayers and develop programs in conjunction with Yukon's social agencies to assist these Yukoners.

246. UCG submits that AEY should be directed to ensure that the next Phase II application addresses bill mitigation for any year-over-year bill impacts of 10% or more and addresses the affordability issue that is affecting ratepayers with low or fixed incomes.

Performance-Based Regulation

247. Over 9 years ago, in its recommendations on the 20-year Resource Plan (January 15, 2007, at page 50), the Board states:

"Now is an appropriate time for YEC and AEY to have a complete review of all GRA Phase I and Phase II matters. The Board recommends that YEC and AEY file a full GRA application before October 31, 2007. The application should include a full cost of service, rate design and an update of the Electric Service Regulations. The Board also suggests that YEC and AEY consider a performance-based regulation mechanism. As well, the Board recommends that evidence be provided as to what other utilities provide for Maximum Company Investment and model theirs accordingly."

248. There is no evidence that AEY has completed a detailed assessment of performance-based regulation in the Yukon nor has it completed a review of the legislation to offer an opinion on YEC's position that performance-based regulation is not possible under current legislation.

249. Given its affiliates and governance, AEY is aware that the Alberta Utilities Commission has approved a switch to performance-based regulation for electric and gas utility distributors

effective January 1, 2013 including its parent companies at ATCO. AEY also admits that without incentives, they will become inefficient and costs recovered from ratepayers will rise.[57]

250. UCG submits that there is no reason why a Performance-Based Regulation (PBR) or an Incentive Regulation mechanism could not be considered following the completion of a Phase 2 review and that there are several compelling reasons to do so. It appears to UCG that there are considerable asymmetries in information between AEY, YEC, the Board and intervenors that make it difficult to ensure that the utilities are carrying on operations in an efficient manner. PBR or an IR mechanism can alleviate the difficulty associated with that regulatory duty by incorporating a formula that provides both ratepayer protection together with a productivity dividend and a financial incentive on the part of the utilities to become more efficient. As well, there should be a considerable reduction in regulatory costs which are significant considering the size of the customer base.

All of which is respectfully submitted this 24th day of November, 2016.

Roger Rondeau
Utilities Consumers' Group

[57] Transcript Volume 1 – November 1, 2016, page 87