

September 20, 2022

Yukon Utilities Board
PO Box 31728
Whitehorse, YK Y1A 6L3

Attention: Mr. Richard Buchan
Chair

**Re: ATCO Electric Yukon's (AEY) – Rate Relief Application
Written Reply Submission**

Attached please find ATCO Electric Yukon's (AEY) Written Reply Submission to Written Submissions from the Utilities Consumers' Group (UCG) and John Maissan (JM), regarding AEY's Rate Relief Application.

Please contact me at chris.cullingham@atco.com if you have any questions about this Submission.

Yours truly,

Chris Cullingham
Manager, Regulatory



YUKON UTILITIES BOARD

IN THE MATTER OF the *Public Utilities Act*, R.S.Y. 2002, c. 186;

AND IN THE MATTER OF an application by ATCO Electric Yukon seeking approval of the 2022 Rate Relief Application

REPLY SUBMISSION OF ATCO ELECTRIC YUKON

I. INTRODUCTION

1. On July 18, 2022, Yukon Electrical Company Limited, doing business as ATCO Electric Yukon ("**AEY**") filed a 2022 Rate Relief Application ("**RRA**" or "**Application**") with the Yukon Utilities Board ("**Board**" or "**YUB**").

2. The Application requests the following approvals from the Board:

- (a) Approval to refund the balance accumulated in AEY's Rate Case Reserve account to residential and commercial non-government customers, via a new Rider Y, effective November 1, 2022 through February 28, 2023.
- (b) Approval of AEY's proposed Rider R revenue refund rate relief mechanism to residential and commercial non-government customers, via the proposed deferral account, effective the first day of the month following a Board Decision (anticipated September 1, 2022).

3. The Board granted intervener status to John Maissan ("**Mr. Maissan**"), the Yukon Utilities Consumers' Group ("**UCG**") and Yukon Energy Corporation.¹ In accordance with the process in Board Order 2022-009, Mr. Massian and the UCG (collectively referred to herein as the "**Interveners**") filed written submissions in response to which AEY files this Reply Submission.

4. AEY observes that the Interveners are highly critical of AEY and the Application. However, as AEY has explained, AEY has consulted with the Minister of Energy, Mines and Resources to evaluate potential rate relief options for ratepayers in the Yukon² and has filed the Application following the example of and in alignment with the Government of the Yukon's

¹ Board Order 2022-11.

² AEY April 29, 2022, letter to the YUB.

Inflation Relief Rebate Initiative.³ As stated in the government's Inflation Relief Rebate Initiative:

Although electricity rates in the Yukon remain the lowest in the North, Yukoners and local businesses are feeling the impacts of rising costs of living being felt around the world.⁴

5. AEY submits that it has responded appropriately to these current economic circumstances and has acted responsibly in bringing forward this RRA to the Board. The RRA will provide Yukon ratepayers with material rate relief in a timely and efficient manner and should be approved by the Board, as filed.

II. SCOPE OF THE APPLICATION

6. At the outset, and as stated in its Application, AEY emphasizes that its requested approvals in the RRA are narrow and limited in scope. AEY has proposed two specific and clearly defined rate relief mechanisms for the benefit of residential and commercial non-government customers. The Interveners raise various issues that are beyond the scope of this Application and the narrow approvals sought by AEY. While the Intervener proposals are addressed in more detail below, the Intervener recommendations propose that the Board make orders that direct AEY to adopt or implement rates clearly beyond, and unconnected to, AEY's Application, including: (a) entirely different rate relief measures based on AEY's past earnings that are ill-disguised retroactive ratemaking proposals; (b) AEY to submit a general rate application ("**GRA**"); and (c) AEY to implement a profit-sharing mechanism in its rates.

7. Pursuant to Section 50 of the *PUA*, the Minister approved the Board to hold a public hearing on AEY's "rate relief application", received on July 18, 2022.⁵ That is the scope of the advance written authority for this hearing provided by the Minister. In AEY's respectful submission, were the Board to expand the scope of this proceeding to consider and approve the recommendations of the Interveners, it would be outside the scope of the written approval provided by the Minister.

8. While the Board does have jurisdiction under Section 27(a) of the *PUA* to "set rates", that jurisdiction must necessarily reflect and be exercised within the confines of the particular

³ Response to AEY-YUB-1 (b-c).

⁴ <https://yukon.ca/en/news/new-temporary-inflation-relief-rebate-save-yukoners-and-local-businesses-150-their-electricity-bills>

⁵ Letter from T. McPhee, Minister of Justice and Attorney General, dated August 26, 2022.

Application before it. AEY has not filed a broad and all-encompassing application, such as a full and complete general rate application, which engages a broad jurisdiction on the part of the YUB to set AEY's overall revenue requirement or review all aspects of AEY's rates. The RRA is not an application to the Board to change AEY's approved base rates.⁶ Simply put, AEY's Application, and the Minister's approval of this hearing process, require the YUB to approve or deny the applied-for rate relief. The Interveners cannot use AEY's Application to request that the Board inquire into matters and impose other measures that are outside the limited scope of AEY's Application.

9. Likewise, while Section 27(b) of the *PUA* gives the Board the jurisdiction "prohibit or limit" any proposed rate change, such as AEY's proposed rate relief, Section 27(b) does not provide the Board with the jurisdiction to enlarge the scope of this Application and impose entirely different rate relief measures than those applied-for by AEY.

10. In summary, while the Board may reject AEY's Application, the Board ought not order AEY to implement the rate relief mechanisms proposed by the Interveners.

III. RIDER Y HEARING RESERVE REFUND RATE RELIEF

11. One component of AEY's proposed rate relief is a refund of the accumulated Rate Case Reserve account to residential and commercial non-government customers. As explained by AEY in its Application, since the last GRA, the reserve balance has increased to \$1.3 million because there have been fewer regulatory applications than in prior years. AEY is proposing to refund the balance as a Rider Y to non-government residential and commercial customers. As outlined in the Application, AEY will continue to collect the approved Rate Case annual amount (\$0.3 million) in its base rates which would offset any present or future applications.⁷

12. The proposed Rider Y is expected to result in a 5.4% bill reduction to residential customers and 4.8% bill reduction to general service customers.⁸

13. The UCG does not object to this rate relief proposal.⁹

⁶ Response to AEY-YUB-05.

⁷ Application, para. 5

⁸ Application, Table 1.

⁹ UCG Submission, para. 10.

14. Mr. Maissan recommends that the Board reject AEY's proposed refund of the accumulated Rate Case Reserve account. It appears that Mr. Maissan's primary reason for this recommendation is his concern that it will increase subsidies between customer classes.¹⁰ AEY has addressed Mr. Maissan's comments regarding subsidization and discrimination below, and they are without merit.

15. Furthermore, Mr. Maissan's proposal that AEY cease the collection of the approved annual amount of \$300,000 for the hearing reserve effective 2022 must be rejected by the Board. As explained above, this is outside the scope of the Application; AEY's application and proposed rate relief does not call on the Board to review the necessity of or appropriate level of funding for the Rate Case Reserve in future years. The collection of the approved annual amount of \$300,000 is approved as part of AEY's Base Rates.¹¹ AEY's proposal simply refunds the balance in the Rate Case Reserve collected from customers, which allows AEY to implement rate relief in a timely and efficient manner and does not alter past Board approvals (as Mr. Maissan is recommending). Simply put, the RRA is not a general rate application.

16. AEY submits that the Interveners' submissions do not disclose any reason for the Board to reject AEY's proposed Rider Y rate relief, refunding the accumulated Rate Case Reserve account to residential and commercial non-government customers, and it should be approved as filed.

IV. RIDER R REVENUE RATE RELIEF

17. As a second proposal for rate relief, AEY proposes rate relief would be the equivalent of Rider R revenue that is specifically recovered from industrial customers in YEC's service territory served under Rate Schedule 39, Industrial Primary ("**Rider R Industrial Revenue**"). To facilitate the proposed Rider R Revenue rate relief, AEY is proposing to record Rider R Industrial Revenue in a new deferral account (discussed below), and once this deferral account's balance has accumulated to \$0.250 million, AEY will apply to the Board to begin refunding this deferral account via a rider to residential and commercial non-government customers.

¹⁰ Maissan Submission, page 2.

¹¹ Board Order 2017-03.

18. The UCG does not object to this rate relief proposal.¹² However, the UCG recommends that AEY order *all* industrial rates received by AEY for 2022 onward returned to ratepayers in rate relief.¹³ The UCG's recommendations are outside the scope of this Application and lack any supporting evidence. AEY will assess the appropriateness for further rate relief in the future; if circumstances warrant, AEY will bring forward to the Board appropriate rate relief measures. However, to prematurely direct AEY to provide rate relief of all industrial revenue, regardless of the source, onward and beyond the timeframe contemplated in this Application is simply premature and unsupported. The UCG has provided no evidence that rate relief is an appropriate and needed measure indefinitely in future years.

19. The UCG's other recommendations, which are proposals that are outside the scope of this proceeding and also invite the Board to violate the principle against retroactive ratemaking, are addressed below.

20. Mr. Maissan does not support this proposal on the basis that it would exacerbate class cross-subsidization and on the basis that the Board should instead order a different form of rate relief, based on alleged "over-earnings." Like the UCG's recommendations, Mr. Maissan's recommendations are outside the scope of this proceeding, similarly tantamount to retroactive ratemaking, and addressed below. AEY also addresses Mr. Maissan's concerns regarding cross-subsidization and recommendations below. Both are without merit.

21. AEY submits that the Interveners' submissions do not disclose any reason for the Board to deny AEY's proposed Rider R Revenue rate relief, and it should be approved as filed.

22. To facilitate its applied-for Rider R Revenue rate relief, AEY is seeking approval a deferral account to track Rider R Industrial Revenue. As explained in its Application, the deferral account meets the standard criteria for the establishment of a deferral account, namely the revenue is not under AEY management's control and is material.¹⁴ As explained in AEY's IR responses, the Rider R Industrial Revenue has grown materially since AEY's last GRA (when this revenue was included in AEY's revenue forecast) and is generally beyond AEY's management control (AEY does not interact directly with these customers, does not speculate on commodities, and does not

¹² UCG Submission, para. 10.

¹³ UCG Submission, para. 12.

¹⁴ Application, para. 12.

generally have any correlated expenses). Accordingly, AEY is proposing deferral treatment on this revenue which will be used to help provide rate relief to customers.¹⁵

23. None of the Interveners dispute that AEY's requested deferral account meets these criteria.

24. Therefore, AEY submits that the proposed deferral account should be approved as filed.

V. THE PROPOSED RATE RELIEF IS CONSISTENT WITH GOVERNMENT POLICY

25. Mr. Maissan as well as the Board have raised questions as to whether AEY's proposed rate relief, which is proposed to apply to residential and commercial non-government customers, is discriminatory or would result in the subsidization of residential and commercial non-government customers by industrial customers.

26. As noted above, AEY has consulted with the Minister of Energy, Mines and Resources to evaluate potential rate relief options for ratepayers in the Yukon.¹⁶ It is clear that the Yukon Government policy is that rate relief measures should be directed at residential and commercial non-government customers. AEY submits that the principle against unjust discrimination in utility rate regulation does not preclude different rates for different classes of customers, where a sufficient rationale exists to justify the distinction.¹⁷ AEY therefore submits that adopting rate relief measures that apply to specific classes of customers, in alignment with government policy, does not result in unjust discrimination.

27. As it relates to cross-subsidization, as AEY explained in response to AEY-YUB-03, a certain level of rate cross-subsidization must be expected – and has previously been approved – in the Yukon. The requirements of OIC 1995/90, whereby a moratorium on rate rebalancing exists, suggest a certain level of acceptability for cross-subsidization.¹⁸ AEY submits that concerns regarding alleged cross-subsidization are not a basis upon which the RRA should be denied.

¹⁵ Response to AEY-YUB-06(b).

¹⁶ April 29, 2022 letter to the YUB.

¹⁷ Alberta Utilities Commission, Decision-D02-2022: Melcor Developments Ltd. Complaint Regarding Fortis Alberta, Inc. Changing Design Standards, at paras. 23-24.

¹⁸ Response to AEY-YUB-03.

VI. INTERVENER RECOMMENDATIONS

28. As discussed above, the Intervener recommendations for alternative rate relief mechanisms are outside the scope of this hearing. As such, they must be rejected by the Board.

1. Alternative Rate Relief Proposals

29. In addition, even if the Board could entertain the Intervener recommendations and require AEY to implement entirely different rate relief than contemplated in its RRA, which the Board ought not, many of the Intervener's recommendations must also be rejected on the basis that they violate the principle against retroactive ratemaking.

30. Both the UCG and Mr. Maissan recommend that the Board order AEY to implement rate relief tied to AEY's achieved ROE or revenue collected in prior years. The UCG's proposal that AEY be ordered to implement rate relief of half of AEY's "accumulated profits" from 2018 to 2021 and industrial revenues received from 2018 to 2020 blatantly violates the prohibition against retroactive ratemaking. Mr. Maissan's recommendation that AEY be ordered to implement rate relief based on prior years' earnings from 2018-2021¹⁹ is likewise impermissible retroactive ratemaking. Mr. Maissan's recommendation is not related to any forecast revenues for 2022 or an examination of costs in accordance with Section 29(a) of the *PUA*. It is an ill-disguised attempt at retroactive ratemaking and must be rejected by the Board.

31. AEY's ROE in prior years results from AEY's existing approved base rates. The rate relief recommendations proposed by the UCG and Mr. Maissan would constitute retroactive ratemaking, if ordered by the Board. In addition, the Interveners' recommendations are clearly outside the scope of this proceeding as discussed above.

32. The recommendations of the UCG and Mr. Maissan squarely offend the prohibition against retroactive ratemaking, as described by the Supreme Court of Canada in *Northwestern Utilities Limited and P.U.B. v. City of Edmonton* ("**Northwestern**").²⁰ In that case, the issue centered on whether future rates could recover past revenue losses. On the basis of the rule against retroactivity, the Court stated that future rates could not be used to recover accumulated losses in the past:

¹⁹ Maissan Submission page 2-3.

²⁰ [1979] 1 S.C.R. 684.

... It is conceded of course that the Act does not prevent the Board from taking into account past experience in order to forecast more accurately future revenues and expenses of a utility. It is quite a different thing to design a future rate to recover for the utility a "loss" incurred or a revenue deficiency suffered in a period preceding the date of a current application.²¹

33. Applying this principle, the Board cannot design a future rate, in this case a rate relief mechanism, to refund to customers any of AEY's earnings in excess of approved ROE for prior years. This is exactly what Mr. Maissan's and the UCG's recommendations propose.

34. Furthermore, there is no provision in the *PUA* that provides the Board with authority to retroactively alter rates. The UCG points to Section 29(c) of the *PUA* as a justification for its recommended relief and asserts that there has been undue delay by AEY in filing a GRA. The UCG has misinterpreted the *PUA*. Section 29(c) of the *PUA* permits the Board to consider excess revenue received or deficiency incurred after the commencement of a proceeding due to undue delay in the hearing and determining of the matter. Section 29(c) has no application to the time before the commencement of a proceeding nor to any alleged delay in filing an application. Section 29(c) simply provides no legislative jurisdiction to violate the prohibition against retroactive ratemaking and refund to customers any earning in excess of approved ROE for the years 2018 to 2021, as recommended by the UCG.

35. In addition, the Interveners for the most part ignore, or appear to disagree with, the principle of prospective ratemaking. This principle is summarized as follows:

The Board's approach to utility regulation follows the principle of prospective ratemaking. Rates are established on the basis of information relating to or available at the test period and apply until such time as another rate decision is issued by the Board. The Board will not approve rates designed to recover revenue shortfalls in past years. Equally, utilities are entitled to profits which are in excess of earnings projected at the time of rate setting.²²

36. AEY submits that the Board cannot direct that the revenues in excess of AEY's approved ROE for the years 2018 and 2021 be refunded as rate relief, as recommended by the UCG, as to do so would also not support the principle of prospectivity.

37. AEY has provided safe and reliable service in the years 2018 and 2021 in accordance with the rates approved by the Board in Order 2017-03. The fact that AEY achieved an ROE in

²¹ [1979] 1 S.C.R. 684 at 699; *Calgary (City) v. Alberta (Energy and Utilities Board)*, 2010 ABCA 132 para. 46.

²² AUC Decision 2009-215 (November 12, 2009), 2009-2010 General Tariff Application – Regulatory Treatment of Income Tax Refund, para. 44, citing *Canada Energy Law Services* (Alta. Commentary), paras. 757 and 758.

those years over the Board-approved ROE of 9.0% is not inconsistent with the principles of rate regulation. Rate regulation is a prospective activity, and expressly contemplates that utilities are entitled to profits in excess of earnings projected at the time of rate setting. AEY has managed its costs within the rates set by the Board, as it is entitled and indeed required to do as an entity subject to prospective ratemaking.

2. General Rate Application Matters

38. As noted above, this Application is not a GRA. Therefore, matters that are more appropriately considered in a full GRA with all the information – cost information and scope of issues that should be considered in a GRA – should not be explored by the Board in this narrow hearing.

39. The UCG's recommendation for a profit-sharing mechanism and that "rate base cannot be added until a GRA" are simply outside the scope of this Application. Similarly, Mr. Maissan's recommendation that AEY be directed to come forward with a GRA for 2023-2024 is likewise outside the scope of this Application nor does it address the objectives of providing timely and efficient rate relief. Although to be helpful, notwithstanding it is outside the scope of this proceeding, AEY has stated in its IR responses that it is reviewing the need to file a GRA in 2024.²³

40. AEY is also mindful that having not filed a GRA 2018-2022, in addition to reducing regulatory burden, the accumulated rate reserve is being refunded as rate relief, thereby benefitting ratepayers. In the Yukon, consistent with an appropriate approach to regulation, there is no requirement that AEY file a GRA every year; rather, AEY must apply to the Board for approval prior to changing rates (*PUA*, s. 28). Indeed, in the past there have likewise been periods where a rate case was not required to be filed every year, and the utility continued to operate under Board approved rates until bringing forward an Application to change those rates.²⁴

41. AEY submits that for these reasons, the Interveners' proposed recommendations must be rejected by the Board.

²³ Response to AEY-JM-01(f)

²⁴ For example, historically, there was a period between Phase 1 GRAs from 1996-97 to 2008-09.



VII. CONCLUSIONS AND REMEDY SOUGHT

42. In summary, AEY submits that it has provided comprehensive support for, and justification of, all approvals requested as part of its RRA. Accordingly, AEY respectfully requests that its RRA be approved as filed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of September, 2022