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IN THE MATTER OF THE ATCO ELECTRIC YUKON 2023-2024 GENERAL RATE APPLICATION

Heard before the

YUKON UTILITIES BOARD

November 27 - 30, 2023

FINAL ARGUMENT OF JOHN MAISSAN

Final Argument introductory comments

In the preparation of this written final argument the transcript was referenced by page and line numbers and whenever possible. This reference will appear in brackets as Tr for transcript, Vol for volume (day), p for page number, and Lx-y for line numbers. For example, a reference to the transcript in volume 3 at page 128 lines 17 to 19 would appear as (Tr Vol 3, p128 L17-19). The Yukon Utilities Board is referred to as “the Board”. Interrogatory responses (IRs) will be referenced by their AEY identifying numbers. Please note that as the transcript volume 2 for day two (November 28) has a header which says Hearing Day 3 November 29, 2023, so it is possible that a reference to volume 2 transcript is incorrectly labelled as volume 3.

In this argument I address both issues in which I am in agreement with the applicant, ATCO Electric Yukon (AEY), and issues on which I have a differing view or disagree with the applicant. My silence on issues and requests of AEY in this argument are not to be interpreted as agreement with, or disagreement with, AEY’s request or position. I leave these matters to the Board to address based on all the information on the record.

General comments on AEY GRA

This AEY GRA is a GRA at two different levels. The first is the straightforward business of a regulated utility providing a safe and reliable supply of adequate quantities of electricity of acceptable quality and at the best reasonable price to all consumers (ratepayers). That is challenge enough in itself, but there is a second and deeper shadow level that is also of significant concern to me. It appears to me that the records of the past 10 to 15 years show a corporate desire to significantly over-earn what the Board determines to be a reasonable return on equity. I am concerned that AEY business is being managed with that as a priority over ratepayer interests.

Sales and Revenue

1. Sales forecast

In the previous test years of 2016 and 2017, AEY primary retail sales significantly exceeded the forecast sales in that GRA and even exceeded the higher level of Board approved sales (Exhibit C3-6). AEY has indicated that primary retail sales growth from 2016 to 2022 averaged 2.4% (IR response AEY-JM-010). Although the forecast growth for 2023 is modest, a higher growth is forecast for 2024. The forecast 375,523 MWh of primary retail sales in 2024 represents just under a 2% per year load growth over the 2022 actual sales of 261,269 MWh. Only the 2023 and 2024 figures are weather normalized, and the remainder are not, however on the whole, the forecast appears to be reasonable.

Recommendation: that the Board approves AEY’s primary retail sales forecast.

2. Deferral accounts

Board Orders or legislative changes

AEY has asked for a deferral account to cover Board Orders and legislative changes (Application page 1-6 and Section 1B). It is my view that AEY is, and has for many years been, subject to regulation and Board Orders under existing legislation, this is the environment in which they do business, and it is inappropriate that there be a deferral account that deals with Board Order concerns that AEY may have.

With respect to legislative changes there is an energy transition underway and by all the scientific information available we, globally, are needing to make significant lifestyle changes sooner rather than later if climate disasters are to be minimized. In my view there is probably some cause for concern by AEY that the legislative environment may change rapidly. However, as noted during the hearing the IPP and Micro-Generation policies have been around and AEY has been dealing with them for a number of years (Tr Vol 1, p35 L17 to p36 L7; and Vol 3, p75 L8-15). Based on AEY witnesses the effect of the micro-generation program has been embedded into the sales forecast and unless there is a significant rate of change there would be no material impact (Tr Vol 1, p99 L17 to p100 L10). The IPP issues are addressed under a separate proposed deferral account.

With respect to other federal and Yukon legislative changes, including for electric vehicle (EV) chargers, these have come with funding attached (Application p1B-3). If AEY is not paying for this infrastructure and they stand to gain incremental sales, there is negligible risk for them.

Grid modernization and grid capacity increases are achieved through capital projects which are brought before the Board in GRAs and approved or disallowed by the Board and do not require deferral accounts. Specific capital projects are commented upon later in this Final Argument.

Risks to AEY with respect to Micro-Generation and IPPs are also discussed under risks considered when determining an appropriate ROE risk premium.

Recommendation: That the Board not approve a deferral account for Board Orders or legislative changes.

Industrial Rider R flow-through

In Appendix A to Board Order 2022-13 dated November 7, 2022, the Board states at page 10:

*"Therefore, the Board is satisfied that AEY has made a case for <u>a deferral account to record **all** industrial sales revenues recovered from industrial customers in YEC's service territory served under Rate Schedule 39, Industrial Primary, from the date of this decision and to continue to do so on a go-forward basis</u>. This is because it is not readily apparent that AEY has placed any end date with respect to this proposed deferral account. AEY stated that*

'AEY will update the refund rider on a periodic basis, as necessary, to provide ongoing rate relief.' Therefore, the Board directs that AEY set up such a deferral account.

Once the balance in the deferral account accumulates to $0.25 million, AEY will make an application to the Board to dispense with the balance in that deferral account."
(Footnote omitted, emphasis added)

As of December 6, 2023, there were no updates of this deferral account rider filed and available on the Board's website, and no indication that AEY had applied to the Board to dispense with the balance of that account. The lack of updates and the lack of an application to the Board respecting this deferral account is concerning as these revenues were stated (also on page 10 of Appendix A to Board Order) to be in the order of $0.9 million in 2021. Thus, from November 7, 2022, to present, a period of 13 months, the balance must surely be in excess of $0.25 if AEY is indeed collecting <u>its actual Rider R revenue of 8.3% on **all** industrial sales</u> from November 7, 2022 on as ordered by the Board.

Of further concern is that AEY states in its Application, at Section 2.3.4 Industrial (paragraph 16) page 2-6: *"… AEY plans to continue its approved Industrial Rider R Deferral, respecting YEC's industrial sales forecast for purposes of calculating AEY's Rider R rate adjustment. <u>AEY proposes to true-up any differences between YEC's actual and approved industrial sales forecast</u> in future rider adjustments."* (Footnote omitted, emphasis added).

The concern with the portion of AEY's application that has been underlined is that it may be implying that AEY is only collecting Rider R revenue for the deferral account from the difference between forecast and actual industrial sales, and not on <u>ALL</u> industrial sales as per Board Order 2022-13.

This concern is further supported by the comments of an AEY representative during the oral hearing: *"So as part of the rate relief, <u>we had a deferral out in place for any differentials from what's already embedded in rates</u>, so if industrial revenues are higher than what we had anticipated, they would flow back to customers. And if they are lower, we could collect."* (Tr Vol 2, p13 L23 to p14 L2; Emphasis added.). This appears to be in direct contravention of Board order 2022-13 in that not all industrial revenues are being captured in this account..

I would support the continuation of the existing deferral account subject to it being exactly as the Board ordered in Board Order 2022-13, i.e. the proceeds of Rider R on <u>all</u> YEC's industrial sales.

Recommendation: That the Board approve the continuation of the deferral account exactly as initially ordered by the Board. And that the Board order AEY to submit, by December 31, 2023, a report showing by month the amounts of Rider R collected from all YEC's industrial sales commencing on November 7, 2022 to the end of November 2023, and if that balance exceeds $0.25 million, as it surely must by now, that AEY

forthwith submit an application to dispense with those funds via a rider in the manner ordered by the Board.

Purchased Power Flow Through and **Diesel Fuel Deferral Account**
These deferral accounts are in existence as they were previously approved by the Board.

Recommendation: That the Board approve the continuation of these deferral accounts.

IPP Flow-through
AEY has one connected IPP (Old Crow) and three more to be connected in the future (Destruction Bay – Burwash Landing, Beaver Creek, and Watson Lake) (tr Vol 3 p38 L24 to p39 L23). Given the lack of AEY experience with battery energy storage systems (BESS), and microgrid controllers plus the fact that there will soon be 4 of them for AEY to maintain, I believe that a deferral account to cover only constraint payments, the maintenance on the BESS, and Microgrid controllers is supportable at this time.

On the transcript (Tr Vol 3, p161 L24 to p162 L3; also elsewhere) Mr. Massie says *"As I stated earlier, the price paid for energy is really targeted at being the same price that it would cost us to make it with diesel. So, again, there is no benefit, and we've been clear with the proponents on this for AEY."* And 2 lines later he says: *"Other than, you know, with the reduction of diesel and the reduced use of our power plant, we are looking to have reduced maintenance, which, again, would be passed on through our revenue requirements <u>once it is realized</u>. So again, they've – if anything, they've made our system more complicated. But they are reducing diesel consumption in those communities."* (Emphasis added.) In one instance we are being told that the IPP is being paid what it costs AEY to generate power and in the next we are being told that there will be other cost savings that will be passed on in future when they are realized. And in conclusion we are being told that these projects are saving diesel fuel.

The implication that the IPP is not getting paid the full avoided cost of diesel generation but on diesel fuel only is supported by AEY's response to AEY-YUB-035 which was discussed between the author and Mr. Massie on the transcript (Vol 1 p39 L6 to p44 L1). In response to this IR (AEY-YUB-035) AEY says that if the IPP project could only produce 50% of its forecast energy there would be a net cost to AEY of $121,000. In the discussion during the hearing AEY could not seem to understand that this means that for the anticipated energy production the IPP must be receiving $242,000 less than the AEY's true avoided cost of energy production (twice $121,000). So, this $242,000 is the AEY real cost reduction (thanks to the IPP), which, AEY says will get passed on **when they are realized**, in other words not now.

In my view any costs other than the constraint payments, maintenance on the BESS, and maintenance on the microgrid controller will be more than offset by these cost reductions of about $242,000 (twice the IPP 50% production loss cost of $121,000) for the IPP project producing as forecast.

Recommendation: That the Board approve an IPP deferral account to flow through to ratepayers the constraint payments, the maintenance on the BESS system, and the maintenance on the microgrid controller only.

<u>Return on rate base / return on equity</u>

3. Cost of debt, no cost capital, and capital structure

I have no issues with AEY's applied for cost of debt and no cost capital, nor with AEY's proposed capital structure of 40% equity.

Recommendation: That the Board accepts AEY's application with respect to cost of debt, no cost capital, and a capital structure that includes 40% equity.

4. Return on Equity

I do not have any issues with AEY earning what the Board considers a reasonable Return on Equity (ROE). However, I do have considerable concern regarding AEY's track record on ROE earnings. Exhibit C3-9 shows that over the past 14 years AEY has earned an average of 10.908% ROE compared to a Board authorized 8.934%, or about 1.97% above the Board authorized ROE. Using Exhibit C3-9 a similar calculation over the past 7 years from 2016 to 2022 shows an ROE of about 3.39% above the Board authorized ROE. I believe that elements of ATCO corporate entitlement or greed have crept into AEY's operations. IR response AEY-JM-025(a) Attachment 1 shows that sister company ATCO Electric Distribution's average earned ROE was about 3.4% above their authorized ROE (line 23 less line 9) over that same 7-year period. By comparison investor-owned Newfoundland Power earned an average ROE roughly 0.4% above their authorized ROE. If AEY had earned an average ROE of 0.4% above the Board authorized ROE I would not have been concerned.

I am relieved to learn that AEY's senior managers do not have any part of their compensations tied to the earned ROE, however, they may not be without pressure from their owners indirectly through the performance part of their remuneration (Tr. Vol 1, p121 L7 to p122 L6).

AEY's desire to exceed their authorized ROE are supported by IR response AEY-UCG-021(c) which, in part, says: *"Under the regulatory framework, utilities are incentivized to find efficiencies and cost savings on a go-forward basis and are entitled to benefit from any efficiencies achieved <u>until rates are reset</u>."* (Emphasis added.) The "… *until rates are reset…*" part also provides motivation for putting off a GRA as long as possible especially when it may be more than just "efficiencies" that are being realized. When questioned about the efficiencies in the hearing Ms. Rogers said: *"…I mean, not necessarily efficiencies, but benefits that customers are realizing with the resetting of rates would be things such as – the carbon rebates that ATCO Electric Yukon was able to access during the period since we last filed an application, growing sales, the growth in the customers* *and things like that. We had higher cost debts retire in the period since we last filed and have been able to source debt at lower interest rates, which has been incorporated into the forecast going forward."* (Tr Vol 1, p75 L16-25). Later in cross examination Ms. Rogers adds a reduction in income taxes from 30% to 27% to that list (Tr Vol 1, p125 L11-13). These additional revenues are NOT efficiencies, but would all fit AEY's definition of being "beyond their control", and yet AEY obviously feels entitled to pass these on to their shareholders rather than their ratepayers for as long as possible.

Under cross examination by Mr. Rondeau much the same message was repeated: *"So for a utility to earn a return in excess of what's in the rates is – is a principle in cost-of-service regulation that provides an incentive for the utility to find efficiencies, to manage their costs, which in the short term would result in higher earnings for the utility."* (Tr Vol 3, p63 L7-12). And once again under cross examination by the Board about more frequent GRAs the same message: *"Again, I would maybe go back to a couple of discussions we were having earlier around the incentive properties of the cost-of-service model as well, where the utility's ability to find efficiencies and earn returns in a short term would diminish with more frequent applications."* (Tr Vol 4, p49 L14-19). I submit that the factors mentioned in the paragraph above are not efficiencies.

And there were other substantial factors at play too – higher than expected increases in primary retail sales and increases in industrial sales (which brought with it Rider R revenues (Tr Vol 1, p124). These, Mr. Massie repeatedly said during the hearing, were outside of AEY's control (Tr Vol 1, p122 L2-4; Vol 1, p124 L22-23; Vol 3, p17 L19-21; etc.). And that may be true but AEY's course of action was to use all these factors to the benefit of shareholders and not ratepayers for as long as possible.

The end result was a windfall of increased revenues and reduced expenses for AEY which enabled a significant increase in ROE above the Board authorized ROE. I believe that this was a "gravy train" that AEY consciously took full advantage of and prolonged the period of "over-earnings" of their Board authorized ROE by delaying a GRA as long as they possibly could. It is my belief that the public and political pressure in 2022, which focused on AEY's overearnings, drove AEY to the YUB in 2022 with the application for the industrial revenue deferral account and to this 2023-2024 GRA. It is my belief that AEY manages their O&M expenses, their capital projects, and their GRAs to maximize the potential for significant ROE over-earnings as discussed in the sections 6 to 8 below.

5. ROE and ROE Risk premium

AEY has requested a British Columbia Utilities Commission (BCUC) benchmark low risk utility premium of 9.65% as decided in the BCUC's Generic Cost of Capital Hearing (GCOC) plus a risk premium based on various risk factors.

I believe that the benchmark 9.65% is an appropriate base. I also accept that there should be an adder for AEY based on risk factors. These risk factors are discussed in the report by Concentric Energy Advisors found in the Application Section 8, Attachment 8.1 (starting at PDF page 155).

AEY's risks have been played up if not exaggerated while in practice most risks are those that AEY has been working with for decades, and as shown in section 4 above, AEY has been enjoying ROE's significantly in excess of those authorized. Weather related risks, which are mostly low temperatures which are, if anything, trending warmer over time, so this risk is no different than in the past and is probably less. AEY is not exposed to hurricanes and storms that include enormous amounts of precipitation that utilities such as Newfoundland Power and Maritime Electric Company Ltd. that are on the comparator list for AEY (AEY-JM-025(a) Attachment 1) are exposed to. After a lengthy discussion with the author, Mr. Trogonoski concludes: *"… our risk premium recommendation doesn't really depend on a finding that severe weather has increased or that it somehow is higher in the Yukon Territory than it is someplace else in Canada. So it's a factor that we looked at. We think investors are more aware of it and are more, you know, keen to understand if the utility has the risk, do they have the ability to recover costs if there is damage to their system."* (Tr Vol 3, P124 L7-16).

Insurance coverage for wildfire damage was discussed in the hearing and the conclusion was that AEY has insurance for their "main property" and that insurance coverage for transmission and distribution lines was either not available or cost prohibitive (Tr Vol 1, p37 L9 to p39 L 5). As part of that discussion it was made clear that transmission or distribution line damage would be paid out of the reserve for injuries and damages (RFID or RID). This is funded by ratepayers, so the risk is not on AEY, it is on the ratepayers. In a later discussion in the hearing, it was established that where insurance coverage is in place, the deductible portion is covered by the RFID (Tr Vol 2, p10 L8 to p11 L 9). So, the risk is not on AEY, it is all on the ratepayers.

With respect to the government micro-generation program under which installations started in 2014, the changes in AEY's sales have been embedded in sales forecasts. In a discussion with Mr. Martino, he was asked if micro-generation had been affecting AEY's ability to forecast sales, and the answer was that it does not affect how AEY forecasts their sales (Tr Vol 1, p98 L25 to p99 L16). In an earlier discussion regarding electric heat, use per customer and forecasting Mr. Martino said: *"… We don't have exact data on the profile of what is contributing to the changes, but typically by us running our data over many years, the trend is baked into our forecast, and implies the change in – if it's electric heat or any other factors that affect use per customer is included in our regression when we run our sales forecast."* (Tr Vol 1, p47 L11-16).

While on the forecasting side of things the micro-generation seems just fine, there are obviously some concerns on the technical side. There is a detailed discussion on the record between Mx. Tredger and Ms. Rogers and Mr. Massie (Tr. Vol 2, p122 L1 to p125 L3). When asked how close to the point where grid power quality is affected, Mr. Massie responds: *"… We haven't been to that point where we can definitely say, like, this is –this is an issue here. But we see that coming in the next couple of years if the micro-gen* *program grown in those areas."* (Tr. Vol 2, p124 L24 to p125 L3). Although no announcement is on the formal record of this proceeding, I have personally checked the Hansard record of the Yukon government legislature, and on November 15, (Hansard p4465) Mr. Streicker did say that they were about to pause the micro-generation program. This has also been mentioned in radio news broadcasts and print media since the hearing. Given the past close working relationship between the Yukon government, YEC, and AEY on this program I am surprised that AEY would not have known that this pause was coming. In any case a pause in the program should provide for an opportunity to address the technical concerns.

With IPP risk, it was established in Section 2 of this Final Argument under the IPP flow through account that there must be a financial benefit to AEY if there is a cost to them when the IPP cannot deliver energy as forecasted ($121,000 for a 50% reduction in Old Crow). There are, however, uncertainties in the costs such as constraint payments, BESS maintenance, and micro-grid controller maintenance. If the Board approves a deferral account for these costs, then there would be little, if any, residual risk for AEY. Beyond that there are circumstances in which both AEY and the ratepayers benefit from fully contributed projects, including IPPs. In the example discussed in the hearing, the Haeckel Hill wind power IPP project from whom Yukon Energy will purchase power, is connected to the grid through AEY's distribution lines. A significant portion of the previously existing older lines and other related distribution equipment were upgraded at the IPP's cost to enable the IPP to export power to Yukon Energy through AEY's distribution lines. With new equipment now installed maintenance and upgrade costs that would have been required at some time, have been deferred for many years (Tr Vol 1 p71 L19 to p74 L15).

An increasing percentage of homes being heated by electricity is cited by Concentric Energy Advisors as making accurate forecasts more difficult (Application Section 8 Attachment 8.1, report page 23, PDF page 161/260). Predicting temperature and other aspects of weather, other than long term trends from climate change, is not practically possible. Therefore, there will be variability in the portion of AEY's sales that relate to space heating. With the decarbonizing energy transition that is necessary to mitigate climate change, and acknowledging that this transition is underway, there are opportunities for AEY to continue to grow their sales, but yes, a portion of these sales will vary from year to year as temperatures vary. As long as the temperature normalized (weather normalized) long-term trends are captured in AEY's forecasting then the higher and lower sales years will even out over time and AEY and their investors will remain whole. Therefor unless there is a sudden upward shift in long-term temperature change there is no measurable risk.

Competition from alternative fuels is a risk that is also discussed in Concentric's report (Application PDF p 162 and 164). In my opinion this is a one-way benefit opportunity for AEY. As home insurance companies are getting very particular about home heating oil tanks and requiring frequent expensive upgrades, some of these residential heating oil customers are switching to either electric heat or to propane heat. As the capital costs for switching to electric heat from oil (or from propane) often involves electrical service upgrades, from 100-Amps to 200-Amps, within the home the costs range upwards from $10,000 and can reach $20,000. My own conversion from oil to an electric furnace in 2017 cost about $12,000. The point is with such capital costs involved, people who have switched are not going to be switching back to oil or propane heat at similar or higher capital costs. Also, in recent years the cost for firewood has increased substantially (to well over $500 per cord) and is sometimes difficult to get, so that is no longer an attractive option for conversions or additions. All this to show that the perceived risk of switching from electric heat to oil, propane, or wood heat is simply not a credible risk. The only possible risk is that of high electricity prices slowing down the rate of conversions to electric heat, however, essentially all new homes being built in Whitehorse will continue to be electrically heated (Tr Vol 1, p45 L1-9).

AEY's Application (Application p8-2, PDF p128) implies that the Board does not recognize the stand-alone principle. The Concentric Advisor's report states conclusively that the Board historically has <u>not</u> recognized the stand-alone principle (Application Section 8 attachment 8.1, report page 9, PDF p147). However, under cross examination by the Board it was established that since the BCUC recognizes the stand-alone principle, then the Board's adoption of the BCUC benchmark <u>does</u> mean that the Board recognizes the stand-alone principle (Tr Vol 4, p44 L19 to p45 L4).

In summary of the discussions above, it is my view that AEY does face a new risk in the IPP costs related to constraint payments, maintenance of the BESS systems, and maintenance of microgrid controllers, and that this risk will be fully mitigated if the Board adopts the IPP flow through deferral account for those factors.

Similarly, there would be a financial risk to AEY of fluctuations in revenues from YEC's industrial sales, but with the Board's continued approval of the Industrial Rider R flow-through as discussed on pages 2 and 3 above, that risk will be fully mitigated too.

In conclusion the AEY business and financial risks, subject to the Board's approvals noted above, is no different than it was at the time of the AEY 2016-2017 GRA.

Recommendation: That the Board accepts the BCUC benchmark ROE of 9.65% and a risk premium of 0.25% as in the 2016-2017 GRA.

<u>O&M expenses</u>

6. AEY track record on O&M expenses

In the 2016-2017 GRA AEY requested O&M expenses of $11.993 million for 2016 and $12.181 million for 2017 (AEY 2016-2017 GRA Application Schedule 1.1 PDF page 12/292) and the Board approved $11.630 million for 2016 and $11.754 million for 2017 (AEY 2023-2024 GRA Application, Exhibit B-1.1 Schedule 1.1). In the three years following the two test years AEY's O&M costs averaged below the Board approved levels for 2016 and 2017 (data from AEY 2023-2024 GRA Application, Exhibit B-1.1 Schedule 1.1) through 2020 before rising in 2021 and 2022. This was despite primary retail sales growth beyond well beyond forecasted levels as was mentioned repeatedly in the hearing (Tr Vol 1, p124 L10-15; Vol 2, p117 L1-6; and elsewhere).

But a growth in customers and sales did not result in an increase in O&M costs as discussed above. In fact, the control or management of O&M costs is cited as one of the ways that AEY maintained high earnings (Tr Vol 1, p124 L15-21; Vol 2, p63 L7-21; and elsewhere). I believe that the explanation is really that one of the methods AEY uses to achieve higher than authorized earnings is to apply for O&M costs as high as possible in GRA years so that they can "manage" costs and earn high ROEs. And, in fact, AEY has been able to manage their O&M costs to within the $11 million to $ 12 million range from 2012 through 2020 as discussed in IR response AEY-JM-015.

In my view the applied for brushing cost is one example of estimating high to provide such flexibility to cut costs to achieve their aims. In the discussion on the record (Tr Vol 1, p82 L20 to p85 L 2) AEY defended their brushing cost estimates. In the IR response AEY-JM-015, AEY states that above average kilometers of lines were brushed in 2021 and 2022 (AEY-JM-015 Note 2 to Table 1 and Note 2 to Table 2). Having achieved more than the normal amount of brushing in 2021 and 2022, AEY should be able to reduce their brushing costs in 2023 and 2024. There are undoubtedly similar flexibilities in O&M costs in other accounts and again I note that in the 2016-2017 GRA AEY was approved for lower than applied for O&M costs and managed to average below those approved costs for 4 years.

Recommendation: That the Board reduce the applied for O&M costs by $500,000 in each of 2023 and 2024.

<u>Capital expenditures</u>

7. Important supported capital projects

Following the installation of the new billing system which can accommodate time of use (TOU) rates, the next most important step in modernizing our customer – grid interface is the metering system. The proposed AMI project is introduced in the application in Section 1B on page 1B-2, and much more detail is provided in a Business Plan attached in IR response AEY-YUB-65. This AMI system will be capable of providing TOU meter readings, remote disconnects and connects, and remote control of connected equipment within the customer's premises (AEY-YUB-65(a) Attachment 1). The proposed project would be the first phase of what is ultimately expected to be a complete grid application (and probably off-grid communities too), with the possible exception of some specialized commercial customer meters (Tr Vol 1 p50 L15 to p55 L18). In my opinion this type of infrastructure is vital to modern electrical grid management and electrical customer services. In the medium- to long-term AEY labour costs will be reduced and customer convenience increased. AMI will also enable Yukon Energy to reduce costs by reducing grid demands at times of cold weather peak loads and during outage restoration.

Recommendation: I strongly recommend that the Board approve this project.

Business Case 30 proposes to improve the voltages on power lines 6L11 and 6L19 to Tagish and Teslin. The technical supporting information (Business case 30 and AEY-UCG-092(a) Attachment 1) indicates that the situation can be serious for long portions of the lines. In an IR (JM-AEY-1-40) AEY was asked why this work had not been done sooner as the voltage situation must have been known at the time of identifying upgrades required to accommodate the potential Atlin hydro project. The response (AEY-JM-040(a)) said that the issues were not fully known until April 4, 2023. I do not find this to be a credible response for the following reasons:

- First is that Yukon Energy filed with this Board a power purchase agreement with Tlingit Homeland Energy Limited Partnership (THELP) Atlin power project on January 2022 in which Yukon Energy and AEY were ready to negotiate the dost of upgrades required to the AEY power lines. At this time AEY must have known of the low voltage issues.
- In AEY's Application on page 9-4 AEY states *"Costs for distribution improvements are forecast based on preliminary engineering design work and take into consideration historical project costs for comparable projects."* This clearly suggests that this project should have been contemplated well before the final sign-off of a technical assessment report.
- And further, in a discussion during the hearing on the IR response AEY-UCG-023, AEY was asked if line losses were the only parameter that AEY monitors on a regular basis and the response was: *"No, it's not just line losses. The overall performance of the line."* (Tr Vol 1, p77 L24-25).

The voltage situation on these lines could not have deteriorated without AEY knowing about it unless they do not do what they claim to be doing. In my opinion AEY was putting off doing this project for some reason. That reason might have been having THELP pay for some of the upgrades or minimizing capital costs to preserve a higher ROE. Whatever the reason, the affected customers deserve better than they have received.

Recommendation: That the Board approve the project subject to the upgrades being able to accommodate and not increase the costs of the upgrades that would be required should the Atlin hydro project proceed in the next several years.

8. Other capital projects

Business Case 25 provides for two substations including the Mayo Road substation. When asked if this could be deferred a year the response was in part *"…project timelines cannot be stretched."* (AEY-JM-035(b)). However, during the hearing in cross examination by the Board, we were informed that this was delayed in land procurement (Tr Vol 3, p89 L4-10). Both the Board and I questioned AEY's capability of delivering the very high capital budgets in 2023 and 2024 in IRs (AEY-YUB-042(b), and AEY-JM-027(a)) and AEY responded that they could achieve those goals. Clearly AEY could not and cannot live up to what was being said in response to IRs.

In Business Cases 27 and 28 AEY proposes to purchase replacement vehicles for their fleet for 2023 and 2024. In cross examination they were asked if they could not have been purchased ahead in 2021 or 2022 while they had the financial resources (read surplus earnings) to do so. In response AEY says essentially that they are purchased when needed and that purchases would not be deferred (Tr Vol 1, p85 L3 to p86 L19). Total inflexibility is portrayed yet in O&M brushing can be varied significantly from year to year (Application p 5-6).

In response to Undertaking 15 (to the Board) AEY provides an updated table of capital expenditures to October 31 and a forecast to year-end compared to the applied for figures (AEY response to undertaking 15 Table 1, p2 of 2). The total capital expenditures for 2023 are forecast to be $24.9 million and $11.8 net of contributions compared to $31.2 million and $14.7 million respectively in the Application. Verification that the very high capital expenditures proposed in the Application were unrealistic.

9. Capital cost track record

Exhibit C3-7 provides AEY's track record on capital costs from 2008 to 2022. In the 2008 test year AEY overspent their approved capital costs by $0.607 million but in the 6 other test years they underspent their approved capital quite substantially. The average over the 7 test years is $1.938 million per year underspent. Note also that the Board approvals for capital were on average $2.68 million per year below the applied for capital expenditures, so actual expenditures were, on average, about $4.5 million per year below applied for levels.

The overall picture is not dissimilar from O&M expenditures, AEY puts everything they believe that they can justify into their GRAs, whether they can deliver this or not, but regardless of what the Board judges to be a prudent level of capital expenditure, AEY can further reduce capital expenditures to the benefit of their shareholders and at the cost of their rate payers.

Recommendation: that the Board approve, for 2023 a total capital expenditure of not more than $24.9 million and a net capital expenditure of not more than $11.8 million, and for 2024 at least similar 20% reductions from that applied for to $20.1 million total capital expenditure (from $25.073 million) and for net capital expenditure a reduction to $14.934 million (from $18.668 million).

Summary of AEY performance

10. Management for shareholders

The AEY track record on O&M expenditures, capital expenditures, and return on equity shows a distinct management bias to benefit shareholders and this comes, of course, at the expense of ratepayers. AEY staff are capable career professionals (a benefit of AEY being part of a larger family of utility businesses that has not been fully recognized or acknowledged) and I am certain that if their focus was on ratepayer value while still attaining the Board authorized ROE, they could and would do a credible job of that. I admit to the suspicion that the senior AEY management must be receiving a strong corporate / shareholder message (directive? reward?) to maximize ROE no matter the ratepayers. In my view this is the only way AEY could have exceeded the authorized ROE by 3.4% (roughly $8 million) over a period of 5 years without coming back before the Board.

Recommendation: That the Board obtain technical support to analyze and closely monitor all the regular reports submitted to the YUB and provide feedback to the Board on AEY (and YEC) performance with a focus on ratepayer value.

11. AEY not before the Board

When discussing high earnings AEY panelists said repeatedly during the hearing that population growth and industrial revenue growth were the two main factors and outside of AEY's control. One clear example is Mr. Massie's statement: *"…two main causes that were outside our control was population growth and the growth of the industrial sector."* (Tr Vol 1, p122 L2-4). There are extensive discussions on the hearing transcripts respecting these two "unexpected" sales increases in 2017 and in the industrial sector that drove up revenues (for example Tr Vol 1, p124 L3 to p125 L9). However, when I look at the information on the Board's records, I am not sure that the situation was as simple as made out to be. First of all, there must have been anticipated customer growth information available during AEY's 2016-2017 GRA, as AEY's primary retail sales forecasts for the two test years were increased significantly by the Board – from 303.7 GWh to 309.9 GWh in 2016 and from 309.4 GWh to 322.9 GWh in 2017. Given that AEY works development on matters with the Yukon government and the City of Whitehorse (Tr Vol 3, p24 L11-17) this lack of knowledge is puzzling. In part the growth may have been driven by the anticipated production decision at the Victoria Gold property near Mayo. Victoria Gold did begin construction in 2017 and Yukon Energy was before the Board in 2017 with the proposed power purchase agreement which had been negotiated. And this agreement provided information on anticipated energy sales to the mine for a number of years. So, while this information may not have been available at the time preparation for that AEY 2016-2017 GRA began, it was knowledge that AEY had before the end of the test years.

For five years after the test years AEY continued to earn well above their authorized ROE. Not until growing public and political pressure forced them to come forward to the Board near the end of 2022 with a limited scope application to return the portion of their overearning revenue related to industrial sales on a go forward basis from the date of the decision. The Board order approving the refund (Board Order 2022-13) was issued on November 7, 2022. Now 2023 and 2024 are test years in this GRA.

In responding to parties on AEY's proposed interim refundable rates, AEY says: *"AEY submits that all parties have sufficient opportunity on a regular basis to review and assess*

AEY's operations through the Annual Filing process, and as demonstrated through the Rate Relief Application, material issues and items that arise can be addressed in a limited scope between fulsome applications, as needed." (AEY letter dated August 10, 2023, page 4 of 8). The reality is that this process did not work for 5 years until considerable public and political pressure was brought to bear on AEY. AEY could have come forward as early as 2018 with a limited scope application dealing with the unexpected retail load growth in 2017 and the anticipated industrial sales that would increase substantially with the Victoria Gold connection to the grid. Instead AEY continued to earn substantially in excess of their ROE. To say that this was not within AEY's control for the years 2018 to 2022 is simply wrong, it was, and <u>AEY chose</u> not to control their overearnings. Had there been under-earnings AEY would have come to the Board with an application to deal with their predicament. Clearly AEY put their shareholders well above the ratepayers.

Recommendation: That the Board put measures in place that would prevent such an abuse of privilege in future. And if the Board does not have it in its power to do that, to request that the Yukon government take steps to protect the ratepayers from such future abuse.

<u>Other matters</u>

12. Net salvage

AEY proposes to re-commence collecting net salvage values of $2.008 million in 2023 and $2.103 million 2024 (Exhibit B-3.3: Application Section 7 updated, page 7-1). The collection had been stopped by the Board as the net salvage was over collected. This re-commencement at a time of high O&M costs and very high capital costs will exacerbate rate impacts on the ratepayers. If the net salvage fund was under-collected AEY had the option to come to the Board to deal with this issue within the 5-year period of 2018-2022. AEY chose not to do so, seemingly to protect substantial over-earnings. In light of this period of very high capital expenditures and high O&M costs, the ratepayers deserve some mitigation in the form of a phase-in. Half of the requested amounts will still exceed the salvage collection cost of $670,216 per year (AEY-JM-2-003(a-b)).

Recommendation: That the Board allow only 50% of the requested Net Salvage in the test years, and that the net salvage be set to the full traditional amount in AEY's next GRA.

13. Terms and Conditions of Service inflation adjustment

In response to IR AEY-JM-002, AEY states that it does not object to the YUB raising the maximum company investment levels in existing (2011) Terms and Conditions of Service Schedule B parts (a) and (b) but noted that this would increase revenue requirement. Some ratepayers are struggling with the high cost of upgrades to electrical service and even upgrades to transformers should they wish to install electric heat, or heat pumps, or electric vehicle chargers. Inflation since these Terms and Conditions of Service were developed is about 35% and the need to proceed with the necessary energy transition to avoid the worst of the climate crisis is urgent.

Recommendation: That the Board increase the maximum company investment levels in Schedule B parts (a) and (b) to the Terms and Conditions of Service effective January 1, 2024.

Respectfully submitted,

John Maissan
December 13, 2023