

YUKON UTILITIES BOARD

**IN THE MATTER OF ATCO ENERGY YUKON
2023 General Rate Application**

REPLY ARGUMENT OF NATHANIEL YEE

20-December, 2023

Introductory Comments

In this reply argument I will mostly address issues discussed in the Final Argument of AEY, and will also briefly comment on parts of arguments by other interveners and add supporting details if relevant and not repetitive and not already addressed in my Final Argument. My silence on issues not addressed is not to be interpreted as agreement with, or disagreement with the stated positions.

AEY Final Argument Reply:

Application Timing:

1. *“AEY also faced significant uncertainty as a result of the COVID-19 pandemic, energy transition, inflation, and global supply chain pressures. Given the high level of uncertainty during this time, AEY was not in a position to develop accurate forecasts and, as confirmed by Mr. Massie, expects that it would have been back before the Board within 1-2 years of any GRA filed during this period, possibly for two additional rate proceedings, which would have resulted in additional costs to customers and would not have promoted rate stability.”*¹
2. AEY was unique in being *“not in a position to develop accurate forecasts”* as YEC, FortisBC Energy, Inc. (“FEI”), FortisBC Electric (“FBC”) and others did not report such difficulties.
3. AEY’s concern that rate proceedings *“would have resulted in additional costs to customers”* is misguided, as AEY’s yearly over earnings exceeded the costs of a GRA. That is, having a GRA (or sometimes two) every year would be less costly to customers than AEY’s choice to continue over earning.²
4. AEY is correct in stating that a GRA *“would not have promoted rate stability”* as rates would have been reduced to bring AEY in line with approved ROE.
5. Put simply, AEY’s excuses for delaying this GRA continue to be as weak as their ROE was strong. AEY’s other excuses are addressed in my Final Argument.

Deferral Accounts: Board Orders and Legislative Provisions

6. In asking for this deferral account, AEY asks the Board to consider the following:³
 - (i) that AEY cannot be aware of or involved in all changes taking place;
 - (ii) that even if AEY is involved, it is not the driver or ultimate decision-maker behind such initiatives;
 - (iii) that energy transition policies are not implemented and changed on regular or predictable timelines; and
 - (iv) that GRA proceedings involve significant lead time and expense.

1 AEY Final Argument p.6 para 8

2 AEY Consolidated Responses AEY-NDP-009 (b) p. 118 for GRA costs, AEY-UCG-042 (d) p.468 for overearnings.

3 AEY Final Argument p.10 para 20

7. For (i) (ii) and (iii), Yes, there are external factors in the world beyond AEY's control that may affect AEY's business. This has always been true and is part of being in this or any business. AEY has presented no evidence that these external factors reach a level sufficient to justify this account.
8. The Board did not approve AEY's requests for similar deferral accounts in its 2013-2015 and 2016-2017 GRAs, and despite the supposedly "rapid pace at which the energy transition is taking place" AEY has still not needed this deferral account or had to initiate a GRA due to any of these factors or provided much in the way of rationale for such an account.
9. And as for (iv), AEY being subject to too many GRA proceedings without this account is clearly not a problem that needs to be solved.
10. Significant change will require a GRA either way, and there will be plenty of lead time before truly significant changes are made.

Forecast Methodology

11. *"...AEY submits that its forecasting has been very accurate in most years."⁴ AEY also notes in the same paragraph that it "was not able to forecast as accurately with respect to the end of 2016 and for 2017..." and has also suggested ignoring data from 2020-2022 due to covid. This leaves 2018, 2019 and 2023 as "accurate" forecasting years. But then AEY also claimed to be unable to forecast accurately during 2018-2022 as an excuse for not initiating a GRA in those years.*
12. *"During the years 2018-2022 AEY continued to submit Annual Filings to the Board, it did not file a General Rate Application due to the high degree of change and uncertainty at the time."⁵*
13. *"And we've also heard a significant amount of evidence from Mr. Massie and Ms. Rogers and I think Mr. Martino as well in terms of the reasons that they weren't before the board in the period between 2018 and 2022. And a large part of that was because of the inability to accurately forecast given things like hyperinflation, even things like a global pandemic, and given things like global wars that have been ongoing."⁶*
14. This means that by "very accurate in most years" AEY means 2023.

Fuel Costs - Deferral Account – Diesel Fuel

15. *"AEY is proposing to reset the Rider F rate to zero effective January 1, 2024, which will reduce customer bills."⁷*

4 AEY Final Argument p.14 para 28

5 AEY GRA Opening Statement pdf p.2, para 3

6 Transcript Nov 28, p. 113 line 17

7 AEY Final Argument p.21 para 50

16. This is not true, and customer bills will not be reduced, as AEY explains in the previous sentence that Rider F being reset to zero corresponds to an increase to Rider R:

17. *“Once the updated fuel costs are incorporated into Rider R following AEY’s GRA, Rider R will increase due to the increase in fuel prices, but Rider F will decrease because there will no longer be a significant differential between current fuel prices and the prices included in rates.”⁸*

Discussion of Capital Projects – Advanced Meter Infrastructure (“AMI”)

18. Like AEY, I am in support of grid modernization, starting with AMI. Noting that an AMI meter costs less than a non-AMI meter, this sounds like a good start, and all new meters should be AMI.

19. It is also notable that my design for the billing statement (confirmed by the Board to be a GRA issue and to which AEY presented no objections) is compatible with grid modernization and displaying TOU rates.

20. So far, grid modernization has been minimal, like other elements of the energy transition in Yukon. We have to start somewhere, and according to AEY, *“AMI is a fundamental building block for grid modernization.”⁹*

Return on Equity / Risk Premium / Historical Earnings Do Not Impact Future Risk

21. In this section AEY argues that *“Utility rates are set on a prospective basis. As determined by the Supreme Court of Canada in Northwestern Utilities Ltd and al v Edmonton:*

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.¹⁰

22. And what is the “past experience” here? It is that AEY has exceeded approved ROE in 13 of the last 15 years. The Board can and should take this past experience into account in looking at costs and revenues presented in this GRA and assume that AEY has again aimed to exceed approved ROE. If only there were an over earnings deferral account to return excess revenue to the customer or donate to charity. But what to do with a repeat offender of sorts? Giving them what they want and hoping for the best would be irresponsible at best.

23. While the Board may not have the ability to recover past over earnings, it is important that there is a mechanism for preventing this now and in the future. UCG has

8 AEY Final Argument p.21 para 50

9 AEY Final Argument p.44 para 122

10 AEY Final Argument p.36 para 96

suggested a GRA every two years¹¹, while the NDP has also quite reasonably requested clarity “about who, if anyone, can compel a utility to come before the board with a rate application.”¹² And Mr. Maissan recommends “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.”¹³

24. If AEY can so consistently game the system, systemic failure needs to be addressed.

NDP Final Argument Comment:

For reasons presented in the NDP Final Argument, I am in agreement with the NDP that AEY “*should not be granted an increased ROE at all and that an ROE of 9% for the test years 2023 and 2024 would be more appropriate.*”¹⁴ I am also in agreement that GRA timing and habitual earnings in excess of fair return are issues needing to be addressed as noted earlier.

Maissan Final Argument Comment:

Mr. Maissan correctly notes “*a corporate desire to significantly over-earn what the Board determines to be a reasonable return on equity.*”¹⁵ I will add that the Fair Return Standard that drives the regulatory process becomes meaningless if the Board determined reasonable return is ignored by AEY. Fair and reasonable rates may have been determined by the board, but they were not experienced by the consumer.

I am also in agreement with Mr. Maissan in support of AMI and TOU rates. That AEY continues to install more expensive non-AMI meters which will have to be replaced is an example of AEY not looking for efficiencies and instead passing unnecessary costs on to the customer.

UCG Final Argument Comment:

I appreciate UCG’s Background section for putting the situation and “the regulatory game” in perspective. While the Board and interveners aim for fair rates, AEY “favours profits to fair play.”¹⁶ This is an underlying theme of intervener arguments. Evidence and claims by AEY should be approached with AEY’s profit motive and history in mind.

Respectfully submitted,

Nathaniel Yee

11 UCG Final Argument p.10 para 48

12 NDP Final Argument p.7 para 51

13 Maissan Final Argument p.14 para 11

14 NDP Final Argument p. 3-4 para 17

15 Maissan Final Argument p.1 General Comments

16 UCG Final Argument p.1 para 1