

2023-2024 Atco Electric Yukon (AEY) GRA  
Reply Argument of the  
Yukon Utilities Consumers' Group (UCG)

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1. AEY will likely rebut that the following remarks #2 to 12 are argumentative. UCG submits that AEY opened the door to these statements when they concluded in #5 of their Introduction that: *“AEY’s evidence is the only credible and reliable evidence, and indeed the only evidence at all, before the Board with respect to the Application. No interveners filed evidence, such that AEY’s evidence is uncontroverted other than testing by certain (but not all) Interveners through cross-examination. AEY respectfully submits that its evidence should be afforded significant weight by the Board and that any positions and recommendations advanced by Interveners in argument should be weighed accordingly given that they are not supported by any Intervener evidence, on the record of this proceeding.”*<sup>1</sup>
2. Phase I regulatory hearings where a particular utility applies to receive transition cost recoveries from their regulator who has limited information, is therefore left unable to detect when opportunities to reduce costs are not actively pursued by the utility.
3. In other words, in our current regulatory system, there is a serious lack of evidence provided as to whether the utilities are operating efficiently or whether our resources are being appropriately managed. The AEY has all the asymmetrical data, and these have never been tested by authorizing an unbiased independent collection and analysis of all the data necessary to benchmark the utility costs. The utilities wish to benchmark their equity return but have no desire to benchmark their efficiencies. Yukon interveners do not have the resources to hire such consultants or legal advice.
4. As the Board does not receive any contradictory evidence during rate proceedings, they must accept the Company’s details as “the best available information”. This maintains that cost recovery is required for economic efficiency.  
*“This presumes, however, a very narrow definition of efficiency based on preventing “uneconomic” bypass of the utility and that utilities minimize costs.”*<sup>2</sup>
5. Many types of alternative solutions to our current cost-of-service regulatory regime are available and are used in most other jurisdictions in Canada and the world.

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<sup>1</sup> AEY Final Argument p.5, #5

<sup>2</sup> Library of Economics and Liberty, [Electric Utility Regulation](#)

6. AEY has an obligation and intention to serve the customers of the Yukon. Not only does it have an obligation to serve customers, but the rates they charge these customers must be fair and just.
7. This obligation to serve model originated out of a monopoly type situation, where there is a sole supplier of essential public services, in this case electric service. As such, public utilities were given a special status (i.e. franchise) in our society because these services are necessary for the general health and economic well-being of the communities being served. This pragmatic approach was intended to provide ratepayers with a course of action to ensure electric utilities did not violate their duty to serve. This is often called the “regulatory or social compact”. This compact is distinctly intended to protect the “public interest.”<sup>3</sup>
8. Ergo, a utility’s duty to serve had its origins in common law principles as opposed to statutory law.
9. These ‘obligations and rights’ of public utilities have been defined in common law principles and generally have four major responsibilities imposed on them because of their special status:
  1. public utilities are obligated to serve all who apply for service within a market (service) area, and within the limit of its capacity (ability to serve);
  2. public utilities are obligated to render safe and adequate service;
  3. public utilities have an obligation to serve all customers on equal terms.
  4. finally, public utilities are obligated to charge only a “just and reasonable” price for the services rendered.<sup>4</sup>
10. This utility/customer/ratepayer relationship was based on ethical principles, not economic principles that entail privileges, not obligations. Obligations have no meaning without social conscience. This compact is there to guide decisions, not to guide the fortunes of utility shareholders, consultants, and lawyers.
11. The main contention used by Atco Electric Yukon during this rate case is that recovery of all prudent costs and a fair return on assets (both equity and debt) are warranted because the "regulatory compact" requires it. This is based on a misconception that the regulatory compact exists simply because the utility incurs costs on behalf of its customers due to the "obligation to serve" so, therefore, customers are obligated to pay. This is a mis-characterization of what the compact was and how it evolved.
12. Throughout the history of utility regulation one can only conclude that regulatory compact, derived from obligation to serve, was created to protect ratepayers’ interest, not primarily utility providers.

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<sup>3</sup> Ibid

<sup>4</sup> Legal Concepts of Public Utility Regulation 119

13. The Yukon Utilities Consumers' Group (UCG) stands by our final argument presented on December 13, 2023. This argument is based solely on facts offered by the applicant, even though AEY contends that intervenor arguments are not supported by evidence, therefore should have little standing.
14. AEY in their final argument attempt to give their rationale on why rate filings were not done in the years following the 2016-17 GRA. They claim forecasting would have been impractical during this time. Of course, they blame this on Covid. AEY then goes on to claim that *"in accordance with regulatory framework, the driving factors that contributed to AEY's higher earnings in the period of 2018-2022 period have either been incorporated into AEY's forecast, such as the observed population and sales growth."*<sup>5</sup>
15. UCG submits that this is the furthest from the details. AEY has stated on the record that they did not factor into their forecasts the years 2020, 2021 and 2022.<sup>6</sup> Accordingly, AEY cannot justify that any savings for these non-test years were passed on for the benefits of ratepayers in this revenue requirement, as AEY did not factor these years.
16. AEY also made it very clear that they would have filed a rate application immediately upon non-performance of their return. So, it would not have been "impractical" under utility impact.
17. For deferral accounts, AEY gives their foundation as to why all these deferrals are necessary. The argument attempts to claim these changes would also benefit ratepayers.<sup>7</sup>
18. UCG submits that we stand by our final argument that most of these deferrals are all one-sided and protectionist.
19. AEY defends their reasoning for regulatory deferrals in that: *"GRA processes are expensive and take a significant amount of time, resources, and effort to prepare. It may not be cost-effective to come before the Board or the interest of regulatory efficiency for AEY to come before the Board in a timely manner with respect to all the legislative and policy changes."*<sup>8</sup> AEY attempts to reason that legislative or policy changes during the GRA time frame would negatively impact the AEY bottom line.
20. UCG submits that regular two-year term GRAs may not be cost-effective in the short term, but medium and longer term would lead to a much more balanced

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<sup>5</sup> AEY Final Argument, p. 6-8 , #s 1-9 rationalize reasons for not filing updated GRAs during the years following the 2016-2017, #11 affirms the quote above .

<sup>6</sup> AEY GRA, p.2-4

<sup>7</sup> AEY Final Argument, p. 10-12

<sup>8</sup> AEY Final Argument, p. 12,#206

approach with more prudent tracking for the forecasting of cost and revenues, as well as leveling out the amount of capital expenditures during each test year. It would thus lead to far less intergenerational inequities, as well as better rate stability.

21. If the regulatory game considers the amount of dollars that AEY over earned each year against the GRA costs, then regular GRAs would be cost-effective.

22. For sales and revenue, UCG submits that AEY did a very poor job supporting how they tallied their sales and revenues to demonstrate their revenue requirement for each test year. This made it problematic to clearly identify the differences in amounts, which they contend need to be recovered in rates. We request the Board direct them to do a better job at this in their next GRA.

23. AEY in their Final Argument offer their position for the forecasting methods in an effort to position themselves with a sound cost and revenue budget for each test year.<sup>9</sup>

24. UCG submits that the record shows AEY wish to increase their O&M expenses from 2017 of \$11.754 (approved) million to \$14.609 for 2023 and \$14.863 million for 2024.<sup>10</sup> Table 5.1 also shows an increase in every aspect of this O&M chart. AEYs energy loss also has bounced up and down since the 2016-2017 GRA between 5.5 and 6 per cent. In 2017-line losses incurred by AEY was 5.5% . 2023 it is forecast in the 6% range.<sup>11</sup>

On the revenue side, AEY admits that one of the reasons they over earned was due to the fact that revenues from sales forecasting increased, even in the Covid years.

25. UCG stands by our final argument on AEY forecasting. Given that this forecasting methodology of AEY has provided them with extra dividends nearly every year since 2008, Accordingly, we submit that a 5% reduction in the Operations & Maintenance expenditures, with a similar reduction in energy/line losses; as well as a 5% increase in the revenue forecast would be a very conservative approach for AEY to still maintain their return.

26. AEY request many deferral accounts for:

- Rider S, Purchase Power Flow Through;
- for Rider F, Fuel Price Flow Through for fuel variances;
- Rider R for Industrial Flow Through;
- new rider for IPP deferral account; and
- new rider for Board Orders or Legislative Changes; i.e transition
- RFID

These would remove the risks preventing AEY from reaching their revenue

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<sup>9</sup> AEY Final Argument p. 12-23

<sup>10</sup> AEY GRA p. 5-3

<sup>11</sup> AEY KPI Report 2022

requirement. As such, eliminate the AEY request for a risk premium.

27. AEY cannot have it both ways, all these flow through deferral accounts at the same time as a risk premium on their equity.
28. For depreciation AEY focuses on Net Salvage being re-opened. They claim this is now necessary because of aging infrastructure and to reduce intergenerational inequities going forward.<sup>12</sup>
29. UCG submits that Net Salvage was frozen from the last GRA. UCG questions that AEY assets did not age during this time frame, nor that by not utilizing Net Salvage during the years 2017-22 now clearly leads to intergenerational inequities.
30. Accordingly, UCG submits that the Board direct AEY to divide the Net Salvage costs applied for in this 2023/2024 GRA into each of the years since the last GRA, (including the test years) to get the accurate balanced amounts to be used in each of these test year.
31. In return on rate base portion<sup>13</sup> of AEY final argument they write: *“In Board Order 2017-18, the Board affirmed that it has been precedent and practice to use a benchmark from British Columbia to determine ROE.”*<sup>14</sup>
32. UCG submits that AEY failed to give the full quote on this issue which was: ***“Therefore, it is determined that the BCUC benchmark approach is a precedent for this jurisdiction and will continue to be the precedent for this jurisdiction until otherwise ordered by this Board.”***<sup>15</sup>
33. This clearly identifies that the BCUC GOC is not the written-in-stone standard that AEY tries to express. The Board has utilized benchmarks from other jurisdictions in the past (i.e. Alberta Utilities Commission/AUC results) and changed this approach in later rate cases.
34. AEY claims there is no other evidence provided on equity return, but they fail to realize that during cross examination, AEY revealed that the Public Utilities Board of the Northwest Territories publicized an ROE of 9.3%.
35. AEY claims that its small size risk of their company is the most prevalent risk factor.<sup>16</sup> None of the chosen comparators even come close to comparison with AEY in size. The Northwest Territories decision on equity return would be the most comparable results for size, transition, and weather normalization. Both are isolated grid utilities, unlike all the other comparators that are connected to the NA grid.

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<sup>12</sup> AEY Final Argument p. 23-26

<sup>13</sup> AEY Final Argument p.26-38

<sup>14</sup> AEY Final Argument, p.27

<sup>15</sup> Board Order 2009-08 paragraph 280-282

<sup>16</sup> AEY Final Argument, p.

36. UCG can live with this 9.3%, as we realize that interest creep has taken place. The only caveat we would place on this amount is that no risk premium be added.
37. If the Board gives AEY all the deferral accounts they have requested, then they have all the risk protection they need to garner their equity return.
38. AEY argues their old “you can’t retroactive rate make” game, therefore you can’t look at AEY historic earnings.<sup>17</sup> However, AEY use precedents when it is to their benefit, i.e. continued use of BCUC GOC.
39. The legal authority AEY attempts to justify the above issue is *Northwestern Utilities Ltd. v. Edmonton*. This case “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 expense of a utility.” Then it speaks to losses incurred by a utility not being reflected in future periods.<sup>18</sup>
40. AEY fails to give any portion of the *Public Utilities Act* of the Yukon in their defense of this position. They also do not make legal authority from the PUACT on the ability of a utility to place capital costs into their rate base in non-test years or freeze regulatory commitments such as Net Salvage in non-test years. UCG submits that the Board make a ruling on these very important issue.
41. AEY writes: “AEY is seeking Board approval of its forecast capital program for the test period, as well as approval of its 2023 rate base, which is comprised of capital additions and depreciation for unapproved projects completed in the years 2016-2022 on a final basis”<sup>19</sup> Later in argument, AEY claims “ Business cases from the years 2016 to 2022 are provided because AEY’s capital additions from prior years are included in its opening rate base for the current application.”<sup>20</sup> Accordingly, UCG submits that AEY placing capital costs into rate base during non-test years and then requesting this to be okayed by the Board in a later rate hearing, continuing with this added rate base into the test years, some 1 to 7 years before, is most obviously retroactive. AEY has already considered these rate base additions in their non-test yearly filings to the Board on return. UCG reiterates their request that the Board make a ruling on this issue.
42. Going forward, by not allowing a utility to do this operation, UCG submits, would get these corporations to file regular rate hearings to achieve the result they would deem necessary to increase their rate base, thus, to recover greater equity return
43. Considering Equity Ratio, AEY argues that a firm with a lower common equity ratio needs a higher rate of return to compensate shareholders for additional financial

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<sup>17</sup> AEY Final Argument p. 35 and 36

<sup>18</sup> AEY Final Argument, p.36, #96

<sup>19</sup> AEY Final Argument, p. 39 #108

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risk (debt borrowing).<sup>21</sup> AEY fails to recognize that the debt holders and the equity shareholders are the same, CUL. The same CUL that AEY claims give their company as well as Yukon ratepayers benefits from ties with their mother corporate headquarters.

44. It appears to UCG that debt rates are somewhat reasonable, and we rely on the Board to find a balanced result.
45. For the Reserve for Injuries and Damages, UCG submits we do not have faith in how AEY manages this deferral account. There are far too many unknowns here on how the AEY insures itself, but you can be certain that they have their back ends covered. UCG requests the Board to look closely at this issue.
46. Regarding capital projects, UCG submits that there is nothing in AEY Final Arguments that dissuade us from our conclusions on the ATCO CIS Cloud Replacement (even the name sounds tenacious), AMI, Asset Management, as well as the other capital items UCG documented in our final argument.
47. UCG submits that these projects remain in WIP until they are proven “used and useful” and thus clearly demonstrate to have a quantifiable benefit to ratepayers.
48. Regarding the Replacement of Watson Lake Generating Units, UCG questions if this is/was an N-1-1 criteria motivation, then why was this not an immediate issue to remedy during the non-test years when AEY was earning above board profits. Instead, it strongly appears as though the AEY chose to give this windfall to shareholders and bonus rewards for their management (i.e. the panel did not deny they receive bonus rewards).

## Conclusion

49. UCG concludes from all this testimony and argument, that AEY not be given any compensation from this rate hearing. In other words, the Yukon Utilities Consumers’ Group appeals that the Board deny any increase in rates for the 2023 and 2024 test years.
50. UCG advocates that this would be a significant incentive for AEY to come before the Board in mid-2024 with a rate application request for 2025/26 test year and carry on doing so every two years with early enough applications to receive Board rulings/decisions before the test years begin. This would greatly aid in solving intergenerational inequities, provide for more stable rates and eliminate the need for the interim rates quandary that has become the norm for regulatory proceedings in the Yukon.

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<sup>21</sup> AEY Final Argument. p.37, #100







