

Yukon Utilities Board

Board Order 2022-13
Appendix A: Reasons for Decision
November 7, 2022

1 INTRODUCTION

On July 18, 2022, ATCO Electric Yukon (AEY) filed an application with the Yukon Utilities Board (Board) entitled “Rate Relief in the Yukon” (Application). The Application was made pursuant to AEY’s April 29, 2022 letter to the Board and was intended to be consistent with the Government of Yukon Inflation Relief Rebate. In response to an information request (IR) from the Board, AEY stated that the application was being made under Sections 27, 28 and 29 of the *Public Utilities Act (Act)*¹.

On August 9, 2022, the Board issued Board Order 2022-09 which gave public notice of the application and set out a process schedule for the proceeding. Board Order 2022-09 also requested parties intending to participate in the proceeding to register in writing with the Board by August 23, 2022.

The Board received requests for intervener status from Yukon Energy Corporation (YEC), Utilities Consumers’ Group (UCG), and John Maissan. Through Board Order 2022-11, dated August 29, 2022, all requests for intervener status were granted.

All interveners were provided the opportunity to submit information requests and to make final submissions. AEY filed reply submissions.

In reaching the determinations contained within this order, the Board has carefully considered the scope of its legislative mandate as well as all relevant materials comprising the record of this proceeding, including the evidence and submissions provided by each party. Accordingly, references to specific parts of the record in these Reasons for Decision are intended to assist the reader in understanding the Board’s reasoning related to a particular matter and do not imply that the Board did not consider all relevant portions of the record.

The Board considers the record of this proceeding closed as of September 20, 2022.

2 OVERVIEW OF THE APPLICATION

In its application, YEC sought approval for two proposals:

- Approval to refund the balance accumulated in AEY’s existing Rate Case Reserve account to residential and commercial non-government customers² via a new Rider Y, effective November 1, 2022 through February 28, 2023.
- Approval of AEY's proposed Rider R revenue refund rate relief mechanism to residential and commercial non-government customers, effective the first day of the month following a Board Decision (anticipated September 1, 2022).³

¹ AEY-YUB-1(a), PDF page 2.

² To ensure clarity, the rate classes being referred to in the Application are the residential class and the general service non-government class. For ease of reference in this decision, the Board will use “residential and commercial non-government customers”.

³ AEY Application, PDF page 2, page 2.

Details of each of these proposals will be discussed in turn. AEY requested a decision on its application by August 20, 2022.

Rate Case Reserve Refund

AEY noted that since the approval of its Rate Case Reserve (RCR) in Board Order 2017-01, there have not been significant regulatory expenses. The Rate Case Reserve collects \$0.3 million annually and has an accumulated balance of \$1.30 million to the end of 2021. AEY is proposing to refund the accumulated balance as of December 31, 2021. If the refund were to occur over the November 1, 2022 to February 28, 2022 time period, AEY calculates that its proposed Rider Y would be 7.21%, in favour of residential and commercial non-government customers.

AEY provided the following table on bill impact for the proposed Rider Y:

Table 1 – Bill Impacts for Non-Government Customers – Rider Y

Rate Class	Bill	Impact
	\$	%
Residential (800 kWh)	-\$8.06	-5.4%
General Service (5 kW/1,000 kWh)	-\$9.87	-4.8%

Rider R Revenue Rate Relief

AEY stated that, through Board Order 2017-03, AEY’s ongoing Rider R was approved at 0.3% of base rates and applies to all base revenue in the Yukon. AEY’s proposed rate relief to residential and commercial non-government customers 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.

AEY noted that industrial revenue has increased rapidly, is material and exceeded \$0.9 million in 2021. AEY proposes that the Rider R revenue rate relief be the equivalent of the Rider R industrial revenue because it has now reached the point of being material and it has limited correlation with AEY’s expenses or operations, as the Rate Schedule 39 industrial customers are located in YEC's service territory.⁴ To facilitate this proposal, AEY will record Rider R industrial revenue into a new deferral account starting in the month following a Board decision on this application. Once the balance in the deferral account accumulates to \$0.250 million, AEY will apply to the Board to dispense the balance in the deferral account via a rider to residential and commercial non-government customers. AEY recommends deferral account treatment, as the revenues for the proposed account are material and are not directly under management control for the following reasons: AEY does not interact with industrial customers in YEC service territory, does not speculate on industrial operations in YEC territory, and does not incur costs related to industrial operations in YEC service territory.

AEY said it would provide customer bill impact details for the proposed Rider R revenue refund rate relief in a future application.

⁴ AEY Application, PDF pages 2-3, pages 1-2

Views of the Parties

John Maissan

Mr. Maissan noted:

Concurrently with industrial and residential growth there has been an increasing public desire to curb climate change by reducing fossil fuel use which is probably increasing customer sales and has increased the need for additional (renewable) electricity supply.

The result has been that AEY's revenues (through Rider R and base rates) have increased substantially while their cost growth has been slower. This is not a situation of AEY's making but a set of circumstances outside of their control but which has resulted in substantially increased revenues and earnings for AEY.⁵

Mr. Maissan also noted that AEY has had five consecutive non-test years; had AEY been as responsible to their ratepayers as to their shareholders, AEY would have been before the Board no later than 2019.⁶ Mr. Maissan concluded that since there has been no scrutiny of AEY's costs and revenues for five years, it is time to have a full and complete review of these costs and revenues in view of substantial growth in industrial and residential loads and shifts in energy demands due to government policy.⁷

Regarding AEY's proposal for the Rate Case Reserve, Mr. Maissan noted that AEY is proposing providing rate relief by dispensing funds built up in the Rate Case Reserve account to the end of 2021 (\$1.30 million) to only residential and commercial non-government ratepayers. The dispensed funds would have been collected from all ratepayers, thus increasing the degree of cross-subsidization between customer classes that is a product of the existing rates. Mr. Maissan recommended that AEY cease collecting the \$300,000 annual amount that goes into the Rate Case Reserve and that amount, effective January 1, 2022, be used to reduce Rider R.

Mr. Maissan also recommended that the balance in the Rate Case Reserve account remain intact for AEY's next GRA.⁸

Mr. Maissan did not support AEY's proposal regarding Rider R revenues collected from industrial customers. In Mr. Maissan's view, AEY's proposal would exacerbate the existing rate class cross-subsidization and contribute to excess earnings. Mr. Maissan also noted that Section 29(a) of the *Act* allows any changes proposed by AEY to apply from January 1, 2022 onward.⁹

The following recommendations were made by Mr. Maissan:

1. That Rider R be further reduced so that the revenue collected by AEY per year is \$1,580,500 less than that which is presently collected.
2. That this Rider R adjustment be made retroactive to January 1, 2022.

⁵ John Maissan Final Argument, PDF page 2, page 1.

⁶ John Maissan Final Argument, PDF page 3, page 2.

⁷ John Maissan Final Argument, PDF page 3, page 2.

⁸ John Maissan Final Argument, PDF page 3, page 2.

⁹ John Maissan Final Argument, PDF page 4, page 3.

3. That the revenues in excess of the reduced Rider R already collected by AEY in 2022 be refunded to all ratepayers during the winter of 2022-2023.¹⁰

In his submission, Mr. Maissan brought forward two other matters. The first was a recommendation that the Board orders AEY to come forward with a 2023-2024 GRA and, if the Board does not have the authority to do so, to call on the Minister of Justice to order AEY to come forward with a 2023-2024 GRA. The second matter Mr. Maissan brought forward was a request for clarification on whether periodic reports filed by utilities can be referenced as relevant information by any party to a proceeding of the Board; he also requested that the Board monitor and review those periodic filings.

Utilities Consumers' Group

The UCG asserted that AEY earned in excess of \$8.4 million above the Board-approved ROE for the period of 2016-2021 inclusive. The UCG also noted that AEY's proposed \$1.3 million rate relief is funded through the Rate Case Reserve and not from return on equity (ROE).¹¹

The UCG submitted that in conjunction with providing the \$1.3 million Rate Case Reserve disbursement and the \$0.9 million deferral account for 2021 for industrial sales, the Board should also order AEY to increase the rate relief by \$4.521 million (from half of the return in excess of the approved rate of return for the years 2018-2021 and industrial revenues received by AEY for the years 2018-2020). It was UCG's position that its proposed rate relief package would total \$6.721 million.¹²

The UCG concluded by requesting that the Board order AEY to share with ratepayers the ROE above the last approved ROE for AEY on a go-forward basis and that all industrial sales received by AEY be returned to ratepayers as rate relief for the years 2022 forward. The UCG's view was that the Board has the authority to grant this under Sections 27(a) and 29(c-d) of the *Act*.

ATCO Electric Yukon

AEY's response to the interveners' position was that the approvals requested are narrow and limited in scope and that the proposals from the interveners are beyond and unconnected to AEY's application. It was added that pursuant to Section 50 of the *Act*, the minister approved a public hearing on AEY's Application, that it is the scope for the proceeding that the Minister approved and that anything beyond that is outside the scope of what the minister approved. AEY asserted that although Section 27(a) of the *Act* gives the Board jurisdiction to set rates, that power must be exercised within the confines of the application before the Board. As the application before the Board is not all-encompassing, such as a GRA, and – as AEY submitted – not an application to change AEY's approved base rates, Section 27(b) of the *Act* does not provide the Board with the jurisdiction to enlarge the scope of the application or impose entirely different rate relief measures.¹³

¹⁰ John Maissan Final Argument, PDF page 5, page 4.

¹¹ UCG Final Argument, PDF page 1.

¹² UCG Final Argument, PDF page 2.

¹³ AEY Reply Argument, PDF pages 3-4, pages 2-3.

AEY noted that UCG did not oppose the Rider Y Rate Case Reserve refund rate relief.¹⁴ AEY asserted that Mr. Maissan’s position that the Rider Y proposal will increase rate subsidies between customer classes and create rate discrimination was without merit and should be rejected and, further, that Mr. Maissan’s proposal for AEY to cease the collection of the approved allotment of \$300,000 for the hearing reserve effective 2022 should be rejected as it too is outside the scope of the application; the approved allotment is part of AEY’s base rates. AEY’s proposal simply refunds the balance in the Rate Case Reserve collected from customers, allowing AEY to implement rate relief to some ratepayers in a timely and efficient manner. This does not alter past Board approvals.¹⁵

With respect to AEY’s second rate relief proposal, Rider R Revenue Rate Relief, AEY noted that UCG did not object to this proposal but recommended that all industrial rates received by AEY for 2022 onward be returned to ratepayers. AEY said that the UCG recommendation was outside the scope of the application and has no supporting evidence. AEY added: “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.”¹⁶

AEY’s position is that the requested Rider R deferral account meets the criteria for deferral account treatment, that this is not disputed by interveners and that it should be approved as filed.¹⁷

The following comments were made by AEY regarding rate discrimination:

... AEY has consulted with the Minister of Energy, Mines and Resources to evaluate potential rate relief options for ratepayers in the Yukon. 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. 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. (footnotes removed)

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. AEY submits that concerns regarding alleged cross-subsidization are not a basis upon which the Application should be denied.¹⁸ (footnote removed)

¹⁴ AEY Reply Argument, PDF page 4, page 3.

¹⁵ AEY Reply Argument, PDF 5, page 4.

¹⁶ AEY Reply Argument, PDF page 6, page 5.

¹⁷ AEY Reply Argument, PDF page 7, page 6.

¹⁸ AEY Reply Argument, PDF page 7, page 6.

AEY also commented on the other recommendations made by the interveners. Firstly, regarding the attempt to capture rate relief through past earnings, AEY rejected these proposals as they view them as a form of retroactive ratemaking and outside the scope of the application.¹⁹

AEY asserted that UCG's interpretation of Section 29(c) of the *Act* is incorrect; Section 29(c) only applies after the commencement of a proceeding and Section 29(c) does not provide legislative jurisdiction to violate the prohibition against retroactive ratemaking.²⁰

Secondly, AEY made the following comments on General Rate Application (GRA) matters:

... 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.

...

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.

...

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 (*Act*, 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.²¹

AEY submitted that for the above reasons, the recommendations proposed by the interveners should be rejected.

Views of the Board

Scope of the Application

The Board has the legislative jurisdiction to make decisions on actual applications that are before it. In this application, the relief requested is for approval to refund amounts in the Rate Case Reserve account and to establish a deferral account on a go-forward basis. The Application is not

¹⁹ AEY Reply Argument, PDF pages 8-9, pages 7-8.

²⁰ AEY Reply Argument, PDF page 9, page 8.

²¹ AEY Reply Submission, PDF page 10, page 11.

requesting approvals for a change in rates or new rates. As such, it is a misnomer to refer to “rate relief” in the Application.

The Board has jurisdiction to set rates under Sections 27, 28 and 29 of the *Act*. In accordance with these sections, the Board authorized on April 27, 2017, in Appendix A to Board Order 2017-01, a deferral account entitled “Rate Case Reserve” in which money collected from customers is placed in the deferral account to be used for hearing costs for applications. Money from this account cannot be used for any other purpose. This has resulted in the request to refund the money in the deferral account to certain customers. The other requested relief is to create a deferral account for purposes of providing a refund to certain classes of customers. Money collected from industrial customers in YEC’s service territory, served under Rate Schedule 39, Industrial Primary, would be placed in the deferral account and any refund from such an account would be addressed in a future application.

Although the interveners have asked the Board to consider additional remedies such as considering past ROEs, changes to rates or directing AEY to file a General Rate Application, the Board considers that these requests are outside the scope of this Application.

Rate Case Reserve

The Board notes that AEY has proposed to disburse \$1.30 million accumulated in the Rate Case Reserve to residential and commercial non-government customers to the end of 2021. The amount accumulated in the RCR was collected from all rate classes.²² The Board is of the view that refunding this amount solely to residential and commercial non-government customers would result in discrimination between customer classes. The Board considered whether refunding this amount to only residential and commercial non-government customers would result in discrimination between customer classes. The Board noted that the principles governing utility regulation allow for discrimination in situations where a utility fails to treat all users of a public utility equally if there is a compelling distinction to be found between those favoured and those not favoured. Unless there is sufficient rationale to justify different treatment for different classes of customers, the difference in treatment results in unjust discrimination in utility rate regulation.

In assessing whether the proposed refund would result in unjust discrimination, the Board considered the submissions of AEY noted above, which took the position that its proposed refund did not result in unjust discrimination. The Board also considered the following response by AEY when asked if the proposed refunding of the balance in the RCR account was rate discrimination:

As discussed in AEY-YUB-01, the proposed rate relief outlined in the Application aligns with the Government of Yukon’s initiative to provide rate relief via the Inflation Relief Rebate. Like AEY’s proposal, that government initiative was only available to non-government residential and commercial customers.

²² AEY-YUB-1-3(a), PDF page 5.

Furthermore, AEY submits 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. The very nature of approved government & non-government rates for the same class of service also suggest a certain level of acceptability for cross-subsidization.²³

The Board finds that the proposed rationale provided by AEY for refunding the amount collected from all customers to only some customers does not justify treating customer classes differently. Although the Government of Yukon’s policy only applies to certain classes, it does not override the general regulatory principle that all customer classes be treated equally unless there is sufficient justification for proposed treatment of different customer classes. Further, any cross-subsidization that exists due to the requirements of OIC 1995/90 is mandated by that legislative instrument and not by government policy. The Board finds that the proposed refund would result in unjust discrimination among customer classes.

Therefore, the Board does not approve the Application for Rider Y as proposed and directs AEY to refund to all customer classes the accumulated amounts to the end of 2021 in the RCR account. In other words, AEY shall disburse the amounts in the RCR account accumulated to the end of 2021 through a Rider Y over a similar term as proposed in the current application across all rate classes. AEY shall provide its compliance to this direction by November 30, 2022. The compliance application will be effective December 1, 2022, and AEY shall treat its compliance filing as a filing for acknowledgement (meaning no further process) and will provide a Word version of the Rider Y schedule to the Board.

Rider R Rate Relief

As described above, the Board notes that AEY has proposed to create a deferral account to track Rider R industrial revenue for purposes of a refund to certain classes of customers. The tracking is to begin the first day of the month following a Board Order on this application. Once the deferral account balance accumulates to \$0.25 million, AEY will apply to the Board to disburse the amounts in this deferral account to residential and commercial non-government customers. AEY added that it will update the rider on a periodic basis to provide ongoing rate relief as necessary.²⁴

The Board accepts the submission from AEY that this industrial revenue “has limited correlation with AEY’s expenses or operations as the Rate 39 industrial customers are located in YEC's service territory.”²⁵ AEY further supported this position by stating:

As AEY is seeking a deferral account to track Rider R Industrial Revenue for the purposes of the proposed rate relief, AEY addresses below how this deferral is in line with the standard criteria for a deferral account as set out in Order 2014-06, which includes:

²³ AEY-YUB-1-03(b), PDF pages 5-6.

²⁴ AEY Application, PDF pages 3-4, pages 2-3.

²⁵ AEY Application, PDF page 3, page 2.

- Under management’s control: AEY does not interact with Industrial customers in YEC’s service territory, so has limited visibility into their operations. AEY does not monitor or forecast metal commodity markets and is unable to speculate on ongoing industrial operations in YEC’s service territory. Finally, AEY does not incur any specific costs related to industrial operations in YEC’s service territory that might vary in tandem with increased or decreased industrial operations or revenue.
- Materiality: Rider R Industrial Revenue has increased to more than \$0.9 million in 2021. Also, AEY notes Rider R Industrial Revenue changes have no corresponding adjustment to AEY’s expenses.²⁶

Therefore, the Board is satisfied that AEY has made a case for 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. 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.”²⁷ 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.

Regarding future disbursements from this deferral account to solely residential and commercial non-government customers, the Board finds that there is justification for the distribution of the balance of the deferral account to these customer classes alone and that it does not result in unjust discrimination for the following reasons. This deferral account is established to contain future revenue from Rate Schedule 39 industrial customers that would otherwise be retained by AEY. Also, AEY does not incur any specific costs related to industrial operations in YEC’s service territory that might vary in tandem with increased or decreased industrial operations or revenue. Further, the Board considers that any disbursement from this deferral account is billing relief and not a refund to such customers.

For these reasons, the Board finds that any disbursement of the balance in this deferral account may apply solely to residential and commercial non-government customers.

Other Matters

Mr. Maissan inquired whether information filed with the Board by the regulated utilities (AEY and YEC) can be referenced and relied upon. All information filed with the Board is public information and may be referenced in a proceeding on an application.

²⁶ AEY Application, PDF page 4, page 3.

²⁷ AEY Application, PDF page 4, page 3.