

Yukon Utilities Board

April 18, 2022

Memorandum

To: Parties currently participating in the Whitehorse Condominium Corp. No. 275 (WCC 275) complaint submitted to the Yukon Utilities Board: Jay Massie, ATCO Electric Yukon (AEY); Ed Mollard, Yukon Energy Corporation (YEC); Ben Charland, WCC 275; Meghan McKenna, WCC 275; and Arlin McFarlane, WCC 275)

From: Deana Lemke
Executive Secretary

Re: **Case-management meeting April 20, 2022 – 2:00 p.m. regarding complaint from WCC 275**

1. On February 11, 2022, the Yukon Utilities Board (Board) received a complaint from Benoit Charland and Meghan McKenna on behalf of WCC 275.
2. WCC 275 stated in their complaint that the price per kWh being charged to WCC 275 for electrical energy consumption on an annual basis is an average 31% more than the average rate for residential customers. WCC 275 added that the difference would increase to 45% in 2022.
3. WCC 275 added that it has a new energy system in use that presents a new situation that needs to be addressed by the Board to ensure customers are charged just and reasonable rates that reflect changes in technology. Specifically, WCC 275's position is that, instead of Rate Schedule 2160 (General Service, Hydro, Non-Government), Rate Schedule 1160 (Residential, Hydro, Non-Government) should be applied. WCC 275 is asking the Board to order an investigation that would result in fair rates in a timely manner. WCC 275 said that the Board is required by paragraph 27(d) of the *Public Utilities Act* to set just and reasonable rates.
4. Currently, WCC 275 is treated as a single point of service with a bi-directional meter.
5. WCC 275 also referred to British Columbia as an example where electrical energy used for common areas of condominiums is charged at a residential rate. It acknowledged that AEY furnishes electricity to its customers in accordance with its terms and conditions of service (T&Cs) but noted that the T&Cs have not been updated since 2011.

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6. In summary, WCC 275 requested:
 - That the Board investigate the complaint in accordance with Section 46 of the *Public Utilities Act*.
 - That negotiations be considered to achieve a settlement in accordance with section 47 of the *Public Utilities Act*.¹
 - If an above settlement cannot be reached, that the Board allow the creation of a new multi-unit residential building rate classification and have those rates applicable to WCC 275.
7. The Board issued a letter March 1, 2022, requesting that AEY and YEC respond to the complaint.
8. AEY and YEC (the Utilities) provided a joint response to the complaint on March 11, 2022. In that response, the Utilities stated:
 - The service to the customer complies with the approved rate schedules and T&Cs, specifically Section 4.13 of the T&Cs.
 - One bill for WCC 275 is required because of the rooftop solar array, and the single bill requirement relates to Section 4.13 of the T&Cs.
 - The metering configuration for WCC 275 is unusual but was set up at the request of the developer.
 - The developer's election as to the type of service affected two costs:
 - (1) The metering and wiring configurations within the building; and
 - (2) The maximum company investment applicable to the new service.
 - The building could be converted to a standard multiple dwelling configuration where each unit is separately billed, but two costs would be incurred:
 - (1) Metering compatible with Measurement Canada standards and regulations which would be required to be installed; and
 - (2) The customers would be required to refund any excess investment received from AEY that was applied to the original construction costs.

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¹ Section 47 states: 47(1) If the board considers it appropriate, the board may endeavor to effect a settlement of a complaint. (2) If a settlement of a complaint is agreed to in writing, signed by the public utility and the complainant, and approved by the board, the settlement binds the parties and its terms are enforceable as an order of the board under this Act.

9. The Utilities concluded advising:

... that rates paid by the Customer align with the approved rates and Terms and Conditions of Service and are appropriate considering the existing metering configuration which stems from the developer's decisions made at the time of construction.²

10. In its reply comments to the Utilities, WCC 275 broadly responded in two parts. In the first part, "Why must the Board investigate", it submitted that its complaint falls squarely under Section 44 of the *Public Utilities Act* and that the Board has a statutory duty to investigate, and these issues can only be addressed under Section 46 or negotiated through Section 47 of the act.

11. For the second part, "Are the rates just and reasonable?", WCC 275 stated that the rates and T&Cs are not just and reasonable. WCC 275 asserts that the Utilities have not provided any evidence that the rates charged are fair. Further, WCC 275 has been unable to verify communications between AEY and the developer. For an administrative proceeding to be fair, full disclosure of all relevant information by involved parties must be shared.

12. On the Board's request, WCC 275 provided to the Board a list of condominium owners.

Case-management meeting

Given the information provided by WCC 275 and the Utilities regarding this complaint, the Board will hold a virtual case-management meeting to discuss the complaint and next steps. The case-management meeting will be an open exchange, and the Board has included the following items of discussion:

- Clarification of specific relief WCC 275 is seeking regarding this complaint.
- Is the requested relief within the Board's jurisdiction?
- What should be the scope of the investigation and are there any matters to be excluded from the scope of the investigation?
- If the service address occupied by WCC 275 is billed as a general service, are the rates and T&Cs consistent with a general service customer?
- If the relief requested is for a new customer rate class, is a new rate class prohibited by Order in Council — OIC 1995/090, as amended by OICs 2008/149, 2012/68, and 2018/220. These OICs are available on the Yukon Utilities Board website under the "Legislation" Tab.

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² Utilities response, March 11, 2022, paragraph 14.

- If a new rate class was created for the service address occupied by WCC 275, would the current rates and maximum investment level materially differ from current residential rates and investment levels? Can a different maximum investment level be applied to the service address occupied by WCC 275?
- If a different maximum investment level were applied to the service address occupied by WCC 275, would there be discrimination within rate classes or between rate classes?
- Comments on WCC 275's proposal to negotiate.

This case-management meeting will be held on **Wednesday April 20, 2022 from 2:00 to 4:00 pm.**

As an additional matter, with Yukon and Whitehorse being a smaller community, there are individual Board Members who may have personal relationships or past employment relationships with the condominium owners, the builder, or the developer. The Board Chair will be the only Board member in attendance at this case-management meeting. The Chair will canvass parties on the approach to proceeding with disclosure of any potential conflicts of interest of individual Board members if conflicts of interest arise during the case-management meeting or investigation of the complaint.

The meeting will be facilitated by the Board Chair with Board staff supporting the meeting. The meeting will be informal and no transcripts will be made of the meeting. No Board Order will be issued as a result of the meeting. At the meeting, parties may mutually agree on any facts or takeaways of the meeting that can form part of an investigation.

Parties are required to e-mail the Board Executive Secretary, Deana Lemke, at yub@utilitiesboard.yk.ca by the end of day, April 19, 2022, indicating the following information for each prospective participant (including any counsel attending) at the case-management meeting: name as it should appear on the video-conferencing platform; organization and role; e-mail address; and phone number that can be used on the day of the case-management meeting to contact the participant in the event of any issues with the video-conferencing platform. Parties will be e-mailed Zoom login credentials for the meeting.

If clarification is required, please contact Deana Lemke at yub@utilitiesboard.yk.ca or (867) 334-3400.