

Responses to the Yukon Utilities Board
Information Requests Round 2 to WCC275/AEY dated 5 September 2023
From Whitehorse Condominium Corporation No. 275 (WCC275)
October 6, 2023

Preamble

The complainants find themselves in a difficult situation in attempting to reply substantively and comprehensively to the information requests provided in Round 2. We lack the capacity and expertise available to the Yukon Utilities Board (YUB) and ATCO Electric Yukon (AEY). So from our perspective, this process of detailed technical and legal review cannot be described as a level playing field. We are a group of 20 owners of residential condominium units faced with extremely high electricity prices who want a resolution that enables us to pay the same prices as other residential users. You are asking questions that are broader than the simple issue raised in our complaint – such as what about charging stations, conservation measures etc. We are not a player with other interests at stake. The detail and extent of the questions submitted to us from the YUB cause us considerable anxiety, as they are beyond our scope, and we have only volunteer capacity to address them. While many of our volunteers have expertise and skills, they are not equal to the capacity of AEY and the YUB.

We have been diligent and respectful in our attempts to achieve our goal. When we first looked at the *Public Utilities Act* and the section regarding complaints, it seemed relatively straightforward, though we understood there had been little prior experience with the complaints process. At the encouragement of the YUB in a case management meeting, in good faith we set aside the complaint for a period of time to enter into negotiations with AEY to resolve the matter. This has been done, and we successfully achieved a settlement agreement: a process which itself was difficult and took a very long period of time. Now we are faced with questions we cannot answer, and feel we are being treated as a regulated utility where big money and issues are at stake, rather than a very small group of consumers who just want to pay what is fair and reasonable. Relatively speaking, our issues are very small. The financial impact of implementing the agreement we and AEY have reached will be miniscule in terms of utility costs and revenues overall and affect no other interests in the system. To the other customers on the system, any effect will be insignificant.

We wish to see this matter resolved as soon as possible: the amount of time and effort involved in this process is very discouraging, as the alternative is to reactivate the complaint, which is basically an unknown process with an unknown timeline.

Below you will see we have responded to questions where we could. If the YUB wishes, it could approve our settlement agreement then require the utilities to address the issues of this type of residential condominium at the next rate restructuring, while being mindful of the overriding need for fairness among all residential customers. It has become clear that the current rate structure is outdated, and has been eclipsed in a number of ways by changes to technology, changes in consumer habits and other factors.

Question 1 – Rate Schedule, Terms and Conditions for Service (TCS)

RESPONSE:

WCC275 complained to the YUB about the rate that the YUB approved AEY to charge to WCC275. The complaint is not a complaint about the conduct of AEY: it is about the rate approved by the YUB. We believe that it is clear that the YUB has the authority to approve our Complaint Settlement Agreement with AEY pursuant to section 47(2) of the *Act*, which makes it clear that the agreement would be enforceable as an order of the YUB. Rates, Riders and TCS are binding on utilities and the public because they are approved by order of the YUB.

We seek approval of the Complaint Settlement Agreement by the YUB. The Complaint Settlement Agreement is designed to override or supersede the Rates, Riders and T&Cs referred to in IR001 Preamble. We believe that the scheme of the *Act* and the purpose of section 47(2) is to provide a mechanism for utilities and their customers to resolve complaints and obtain YUB approval – including circumstances such as ours, which were not anticipated when the Rates, Riders and T&Cs were earlier approved. To address unforeseen circumstances is clearly a purpose of Section 47(2), and we ask that the Board utilize this section to right a wrong. During our settlement conference with the YUB Chair, we were asked to see whether we could settle our complaint. We have done this in good faith and in compliance with the scheme of the *Act* and now ask for YUB approval.

Section 47(2) is intended to deal with specific complaints. The Rates, Riders and T&Cs are general in their application. It is a well-established principle of statutory interpretation that the specific provisions prevail over the general ones (*specialibus generalia non derogant*). This is one of the tools to determine paramountcy of conflicting statutes which are discussed by Ruth Sullivan in “Statutory Interpretation in a New Nutshell”, (2003) 82 Can Bar Rev 51.

So in specific response:

- (a) For the reasons given above, the agreement is intended to supersede the rate schedule and the riders.
- (b) For the reasons given above, the agreement is intended to supersede section 4.13 of the T&Cs.
- (c) The agreement contains a modified price or rates. If it is approved by the YUB pursuant to section 47(2), it will, in the words of section 28(1), contain a “rate set by the board pursuant to this *Act*...”. Since it will contain a rate set by the YUB, the 90-day requirements of section 28(1) will not apply. They only apply if the rate is not approved by the YUB.
- (d) Section 47(2) does not, strictly speaking, override section 28(1). The two sections work in harmony and are not in conflict. As explained above, the approval of the YUB under

section 47(2) sets the rate which means that the 90-day requirements of section 28(1) will not apply.

- (e) AEY will not change the meter under the agreement.
- (f) The service will be the same as provided before the complaint. Our complaint is limited to the rates charged for electricity.
- (g) The meter and the service are not changing. Only the rate will change.

Question 2 – Common Areas

RESPONSE:

WCC275 does not have the information required to inform the YUB about how other condominiums are treated for billing purposes. We defer to AEY for responses to (a) through (d).

We do hope that YUB will understand that the units of WCC275 are governed by the *Condominium Act 2015* and the WCC Bylaws. The Bylaws impose on WCC275 a duty to provide (not sell) heat and electricity to the units and the common property. Anecdotally, we understand that other condominiums are organized differently, and in those cases unit owners buy electricity directly from AEY and are not supplied electricity by the condo corporation. In those condos, the condo corporation only causes electricity to be provided to the common property and not to the units.

Because WCC275 supplies electricity to each unit, the cost of electricity is a “common expense” as defined in the *Act* and must be recovered by WCC275 in a manner similar to the recovery of condo fees.

Questions (a)-(d) do not appear to appreciate the difference between WCC275 and other condominium buildings. More important than the way other buildings are organized around common areas (we assume you mean common property) is that the cost of providing electricity to condo units in WCC275 is a common expense.

The existing rates charged by AEY and T&Cs 4.13 appear to be designed for a different type of building and heating system than that of WCC275. They are, in effect, a “square peg in a round hole.”

Question 3 – WCC275 defers to AEY

Question 4 – WCC275 defers to AEY

Question 5 – Cost of meters for individual units.

RESPONSE:

WCC275 was informed anecdotally by an engineer associated with the building project, and by AEY, that the cost would be prohibitive, i.e. that the cost of such a significant project would not be recoverable for a very long time from savings on power bills. These were informal responses to questions in conversation about alternative solutions and while they cannot be relied on as estimates, they are indicative. As a result of those comments, WCC275 took no further action to obtain detailed estimates for what would be a substantial renovation to its energy system and building. We do not have the expertise nor the capacity to commission a detailed design estimate. Perhaps AEY can provide a more informed estimate. As a comment, we also think it unimaginable to change a building's construction at great expense and inconvenience rather than the terms and rates it is charged, at relatively low expense. If there was an easy fix available to WCC275, we would likely have gone that route.

Question 6 – Cost reduction of electrical energy

RESPONSE:

(a) AEY can better provide an answer. To provide the calculations requested we would need to engage a professional that we presently do not have and cannot afford.

(b) It is clear that should AEY suffer any loss of revenue, it will be of insignificant impact on its overall revenues. The estimate provided in our complaint is approximately \$20,000 per annum. For the year ended 2020, AEY financial statements indicate revenues of \$82,333,000. As a percentage, \$20,000 is 0.02429 per cent of that sum: insignificant by any standard. Spread over all other customers, the amount and therefore the impact becomes infinitesimal. If AEY was concerned about loss of revenue, it was never mentioned during negotiations.

At the same time, it is worth noting that the proposed agreement would only be effective to the date the Complaint was filed with the YUB. All the unreasonably high revenues received by AEY from WCC275 from start of service to date of complaint amount to a windfall that benefits AEY and in turn all other customers.

Question 7 – Board Authority

RESPONSE:

The YUB has no authority past the point of service. Neither does Measurements Canada because there is no sale of electricity downstream of the meter. Please also see our answer to Question 14 below re the *Condominium Act*.

- (a) In any event, we do not ask the YUB to modify or override Measurements Canada standards. The YUB can apply them only to transactions to which section 9(1) of the *Electricity and Gas Inspection Act, RSC 1985, c. E-4* applies. It is important to read the entire *Act* and not rely on only selected sections of the *Act* or the provisions of a website. We understand that section 9(2) applies to meters used as the basis to charge for electricity supplied by AEY to WCC275. This is because there is a sale of electricity by AEY to WCC275.

Section 9(1) of the *Electricity and Gas Inspection Act* applies where a purchaser or contractor intends to use a meter to charge for electricity. So it does not apply unless there is a purchaser or contractor. The *Electricity and Gas Inspection Act* defines “purchaser” as “any person to whom gas or electricity is sold”. It defines “contractor” as “any person or body that has undertaken to supply electricity or gas to any purchaser”. It is important to recognize that there cannot be a contractor without a purchaser. And that there cannot be a purchaser without a sale.

When WCC275 recovers the cost of electricity from unit owners, it is not selling the electricity. It is no different than when WCC275 covers the cost of insurance for unit owners. It does not sell insurance to the owners, but it is obliged to recover the cost as a common expense. Because there is no sale of electricity by WCC275 to unit holders, there is no purchaser or contractor and therefore section 9(1) does not apply to them. We discuss this further in our response to Question 14.

- (b)-(f) For the reasons above, we see no reason to make changes to comply with inapplicable Measurements Canada standards. There is no circumstance under which WCC275 would contemplate changing its system. We defer to AEY for responses to (b)-(f). For example, how can we answer (e), when we do not know what the future demand and conservation schemes might be? In addition, we have no EV-chargers; therefore, we have no EV-charger operating costs. We fail to understand the relevance of these questions to our request that you approve our settlement agreement.

Question 8 – Notice to customers

RESPONSE:

As the impact of the settlement agreement on other customers is insignificant, WCC275 believes the question of notice to be unnecessary. Should the Board so desire, it could approve our proposed agreement with AEY then flag the question of fair rates for condominiums or other buildings such as ours to be addressed by AEY and Yukon Energy at the next rate restructuring, where all interests are represented. In such an event, WCC275 would need assistance to effectively participate in the regulatory process. For the record, this is not something we are asking for as the volume of work involved would likely overwhelm our small condo.

Question 9 – Inadequate responses

RESPONSE:

We are unable to locate the referenced clause mentioned in (c). Section 3.2(c) does not appear to exist in the *Public Utilities Act*.

Question 10 – Inadequate responses - WCC275 defers to AEY

Question 11 – Follow up responses

RESPONSE:

We address this in response to Question 12, as well as in our response to Question 1.

Question 12 – Preferential treatment

RESPONSE:

- (a) CC275 disagrees with the suggestion that we seek preferential treatment, or that the proposed settlement agreement would achieve such a thing. We have been clear all along that what we seek is parity with other residential customers, which we think is fair and reasonable. In addition, it is consistent with the utility's regulatory principle that all residential class customers are charged the same rate -- which is different from the higher rate charged to other commercial, industrial and governmental customers. Our condominium is residential – there are no commercial, industrial or governmental activities in the building. Our unfavourable categorization as “general” service, instead of “residential” which is what we truly are, is an anomaly that only YUB can fix with its powers to issue

orders under section 47(2) of the Act. We submit that all other residential customers, be they single family residences or other residential condos are treated preferentially in comparison to WCC275. Why are we paying more than they are for our electricity?

- (b) We understand that owners of Yukon residential condos are billed at the residential rate for the electricity provided to their units. We are billed at the higher general service rate for electricity to our residential units. In addition, we pay a significant “demand charge” which all other residential customers do not pay. Our settlement agreement would remedy this inequity, which has treated other residential customers preferentially in comparison to WCC275.
- (c) We also point out that single family residence customers are charged at the residential rate for all electricity provided to their property – be it a house, a garage, a greenhouse, a shed or any other outbuilding. We ask that our property be treated the same. Not to do so, would be to treat single family residence customers preferentially in comparison to WCC275.
- (d) During negotiations, AEY insisted on certain provisions we found objectionable -- their stated reason was to avoid preferential treatment. Even though we disagreed, and believe we will still actually pay more than other residential customers, we have agreed to their proposed terms in order to settle the matter. We draw your attention to the facts that the proposed agreement would only be effective to the date the Complaint was filed with the YUB: all the unreasonably high (non-residential) revenues paid to AEY from start of service to date of complaint amount what we consider a “windfall” that has unfairly benefitted AEY and other customers. In addition, in order to settle the complaint and in a compromise of our position, we have agreed to pay what AEY has characterized as “Investment true up costs” (with no evidence to support this contention) to AEY. These terms are all favourable to AEY and potentially to their other customers, and not to WCC275.
- (e) This question is unclear. We continue to believe the proposed settlement agreement is fair and reasonable as well as within the scope of the legislation and authority of the YUB.
- (d) We have answered this question more than once and in more than one way.

Question 13 – Parts D and E of Complaint Settlement Agreement

RESPONSE:

We believe that the applicable regulatory principle is that all residential customers should be charged the same rate for the electricity they purchase. As discussed, the YUB has discretion to approve settlements in accordance with this principle. For reasons we do not understand, 4.13

was approved over a decade ago before there were any residential condos with one meter – ours is the first. It is clear that the effect of applying it to WCC275 is wrong and unfair because it creates a preferential rate for residential condos with more than one meter. It of course also preferentially treats other single residence customers as compared to us. The settlement agreement will remedy this preferential treatment.

Question 14 – Board Jurisdiction downstream of point of service

RESPONSE:

We have no legal opinion. However, our analysis is simply this: The YUB's jurisdiction is to regulate the business and activities of a utility such as AEY. Pursuant to section 22 of the *Condominium Act* 2015, the electrical, plumbing and other facilities (as defined in the *Act*) are part of the common property of WCC25 and are not owned by AEY. Furthermore, paragraph 12 of the WCC275 Bylaws obliges it to cause electricity to be delivered to the units and obliges the unit holders to reimburse WCC275 for the cost of electricity it has purchased from AEY. WCC275 does not sell electricity and is not a public utility, as defined in the *Public Utilities Act* because it does not “sell, deliver, or furnish electricity to or for the public or a corporation for compensation”. It furnishes electricity to unit holders who are neither the public nor a corporation. Matters governed by the *Condominium Act* 2015 and its Bylaws are beyond the jurisdiction of the YUB.

It is also clear that the YUB authority ends at the point of service: this is confirmed in practice, as AEY takes no ownership of or responsibility for any matter beyond the meter, which is the point of service, and accordingly, activities downstream of it are not regulated by the YUB.

Question 15 – Hypothetical question about what if units had been separately metered?

RESPONSE:

This is a hypothetical question, because as stated earlier we will not install single meters. However, our opinion is that, if CC275 had been developed in the conventional manner with each residential unit having its own meter, the circumstances/prices to residents that we seek through the settlement agreement would be essentially the same as if it had been developed conventionally. To provide a response in detail is to require expertise that CC275 does not have and cannot afford. We do not know of any regulatory principle requiring separate meters for each unit.

Conclusion

We are worried that we do not understand all your questions, many of which relate to things that have nothing to do with our simple agreement. We are also worried that you do not understand our answers or our situation. For instance, our building is heated and cooled as a whole, similar to a heat pump and distributive heating/cooling. Individual units do not have individual electrical baseboards.

In light of these concerns, should the YUB have additional questions, we would request a conference to discuss the matters in person. As well, if it would assist the YUB, we would be prepared to offer a site visit to our building, so that you can better understand the unique electrical/energy system of WCC275.

(end)