ATCO ELECTRIC YUKON (AEY)
2023 GENERAL RATE APPLICATION

FINAL ARGUMENT OF THE
YUKON NDP CAUCUS

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Introduction

1. Yukon NDP Caucus applied to intervene in the 2023 ATCO Electric Yukon (AEY) General Rate Application on behalf of all Yukoners. The Yukon NDP had grown increasingly concerned about AEY's regular over earnings on their board ordered return on equity of 9% since 2017 and the effect that has on ratepayers. Yukoners are facing rapidly increasing costs of housing, fossil fuels, foods, and now, electricity. Continued rate increases will be a hardship for many and the boards ultimate decision in this application should reflect this. This intervention and final argument aim to ensure that AEY is awarded a return on equity that reflects their proven ability to over earn and protects ratepayers from rate increases that will only serve to enrich the company's shareholders.
2. The Yukon NDP Caucus, represented by MLA for Whitehorse Centre Lane Tredger, registered as intervenors to engage in good faith with the boards GRA process. Like the other intervenors in this application, our organization does not have the resources to hire expensive and specialized legal counsel. As an organization with a democratic mandate representing a significant portion of the Yukon population, it is our hope that the board will consider this submission carefully and find itself in agreement with what the information presented in the best interests of Yukoners.
3. As with most of our engagement in this process, this argument will focus primarily on AEY's history of over earnings, it's requested Return on Equity and Risk Premiums. The absence of argument on other areas of the application does not constitute necessarily agreement with other components of the rate application.
4. The issues put forward in our argument include those that were raised repeatedly during the process, through information requests, and during the oral hearing. These issues are:
    a) The application of the stand-alone principle.
    b) AEYs history of overearning.
    c) A fair return on equity.
    d) Risk premiums.
5. Each of these arguments will be laid out in the following pages.

Argument

a. Stand Alone Principle

6. In its application, AEY states that the Yukon Utilities Board "historically has not accepted the Stand-Alone principle"[1] and urges the board to reconsider this practice. The Yukon NDP argues that while the board may indirectly consider the principle through the acceptance of the September 2023 BCUC decision[2], that it should not be considered in every instance.
7. In response to the cross examination from the YUB, B. Rogers states that their cost of debt is included in the revenue requirement[3] which undermines the case for the stand-alone principle.

[1] 2023-2024 ATCO Electric Yukon General Rate Application, pdf p 147
[2] AEY 2023 GRA Transcript Volume 4, November 30, p 44, 45
[3] AEY 2023 GRA Transcript Volume 3, November 29, p 168

AEY also argues that they receive access to lower cost debt, and that cost is included in the revenue requirement[4] – therefore they have involved their parent company, Canadian Utilities Inc. (CUI) in their application. As a result, both the benefits and the costs of this business arrangement should be considered and scrutinized by the board.

8. The ability of AEY to access lower cost, but also lower risk debt through CUI is a significant reduction in actual risk incurred by AEY. Mr. Trogonoski during the hearings stated that "the situation here is fairly unique on how terms of how the debt side of things work for AEY" and suggested that most utilities do not have a similar relationship with their parent company.[5]
9. If AEY is indeed unique because of its relationship with ATCO Electric\CUI\CUL, the board should consider this.
10. Mr. Trogonoski highlighted during the oral hearing that AEY is dependent on their parent company for access to debt[6]. It is one thing to have a business relationship with the parent company, but if AEY considers itself dependent on CUI, how can they also stand-alone?
11. There is a long list of risks and costs that are mitigated by the relation AEY has with ATCO Electric and CUI. As referenced during the oral hearing, they include access to a pension fund, service agreements with sister companies that do not include a profit margin and therefore are cheaper than an outside contractor, cheaper IT services, shared applications, various manuals and policies and a warehousing system[7].
12. The Yukon NDP makes this argument about the stand-alone principle because it is relevant to argument that will be made in the next section.

b. History of Overearning

13. As presented in exhibited C3-9, AEY has over earned on its board approved ROE in 13 of the past 15 years by an average of 1.974%. AEY argued that this is the result of only specific circumstances, which it has done it's best to prevent.
14. In NDP-AEY-1-10, the Yukon NDP reference an investor presentation from AEY parent company Canadian Utilities Limited (CUL) in which CUL boasts about the ROE that its Alberta based regulated utility companies receive in excess of the Alberta Utilities Commission approved returns. According to the presentation, CUL utilities earned an average of 2.1% above the AUC approved returns over the last ten years.
15. It is clear based on the above that over earning is not an accident for AEY but a corporate wide goal. AEY has done very good work for its shareholders over the years and awarding the ROE requested by AEY in their GRA is unnecessary.
16. The Yukon NDP argues against the application of the stand-alone principle in considering the Return on Equity for the AEY 2023 GRA.
17. Based on AEYs demonstrated cost savings and its long history as part of a company who boasts of their ability to consistently over earn their regulated returns, the Yukon NDP argues that AEY

[4] AEY 2023 GRA Transcript Volume 3, November 29, p 170
[5] AEY 2023 GRA Transcript Volume 3, November 29, p 170
[6] AEY 2023 GRA Transcript Volume 3, November 29, p 166-167
[7] AEY 2023 GRA Transcript Volume 3, November 29, p 171-172

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.

18. Regardless of the ROE granted by the board, their history shows that AEY will find a way to outperform that return. Increasing their approved ROE will only serve to further enrich shareholders, rather than provide improved services or fairer rates for Yukoners.

c. Return on Equity

19. AEY is seeking a Return on Equity of 9.65% plus a .75% risk premium based on the latest BCUC decision on Generic Cost of Capital for a total ROE of 10.4%[8].
20. The Yukon NDP Caucus argues that this is too high, and the board should consider a lower ROE based on the following factors: the reduced cost of and ease of access to debt to AEY via CUI, the fact that AEY has already been earning more than their proposed ROE of 10.4%, and the AUC decision that matching the ROE awarded by other regulator is not sufficient to satisfy the return standard.
21. During cross examination of Panel 2, J. Trogonoski stated that "…the company needs to have a strong enough return that they can go out and attract additional capital…"[9]. However, Mr. Trogonoski also pointed out that the AEY does not raise capital in the market, but rather finances its capital through its parent company CUI[10].
22. Given the argument presented in section a. of this document about the need to consider AEY as a subsidiary of several larger companies, the Yukon NDP argues that the need to attract capital on the market through a higher ROE should not be a consideration for the board.
23. During cross examination, Mr. Trogonoski also stated that he thought 10.4% was a fair return for the risks faced by AEY[11]. The Yukon NDP argues that there is no need then to grant a higher approved ROE to AEY, as AEY has earned more than 10.4% in both previous test years (2016 and 2017) and every year since[12].
24. It is unreasonable to continually award an increased ROE when the utility seems impervious to the market risks and conditions that it asserts affect its business. Given the excellent financial returns of AEY since their last GRA, the Yukon NDP argues that the approved ROE should remain at 9% for the test years 2023 and 2024. Particularly since the test year 2023 is already nearly over, AEY could easily plan to come back before the board with a new application in 2025 if it finds that it is not earning a fair return at that time.
25. In it's recent Generic Cost of Capital (GCOC) decision, the Alberta Utilities Commission (AUC) states that "matching the ROE and deemed equity ratios awarded by other regulators, on its own, does not satisfy the fair return standard, nor does it establish just and reasonable rates. The objective of the GCOC is to consider the market expectation for the utilities raising capital necessary to provide safe and reliable utility service in Alberta. In setting the GCOC for the

[8] AEY 2023 GRA Transcript Volume 3, November 29, p 148-149
[9] AEY 2023 GRA Transcript Volume 3, November 29, p 144
[10] AEY 2023 GRA Transcript Volume 3, November 29, p 166
[11] AEY 2023 GRA Transcript Volume 3, November 29, p 150
[12] Exhibit C3-9

utilities in Alberta, other jurisdictions can be a useful indicator or benchmark for evaluating contemporaneous rates of return and whether return expectations are generally increasing or decreasing”[13].

26. While the YUB has not accepted AUC decisions as a benchmark, the point they make in the above quote about market expectations for raising capital is a relevant one for AEY. AEY has argued that they should receive a return similar to BC utilities with a higher cost of access to capital. The Yukon NDP disagrees with AEY on this and argues that the YUB should consider the actual cost of raising capital incurred by AEY, rather than a hypothetical one.
27. AEY did not provide any comparable Alberta based utilities in exhibit JPT-2, presumably because it does not think there are any comparable utilities in Alberta. However, when considering the cost of raising capital, the Yukon NDP argues that the reduced costs that AEY receives through CUI makes it more comparable to larger utilities in Alberta than the small sized BC utilities who raise their capital independently. The 2023 AUC GCOC determined 8.5% to be a fair return it’s utilities at 37% equity[14].
28. The Yukon NDP argues that while the BCUC decision demonstrates an expectation of increasing return, the AUC decision does not and that the current fair return of 9% for AEY at 40% equity remains a reasonable expected return for Yukon utilities.

d. Risk Premium

29. AEY has applied for a sizeable risk premium increase in this application, from the previously award .25% to .75%[15].
30. The Yukon NDP will argue in this section that:
    a. the risks faced by AEY relative to YEC have not increased since the last GRA and that YEC is an appropriate comparison for AEY;
    b. that the settlement for Maritime Electric Company Limited is the most appropriate comparison to AEY based on their own evidence;
    c. that the risks associated with the energy transition were present and have not substantially changed since the 2016-2017 AEY GRA;
    d. that AEY believes their costs are relatively stable despite the realization of a number of perceived risks since 2016; and
    e. therefore no increase to the AEY risk premium is warranted.
31. In Board Order 2009-02, the YUB noted that “relative to YECL [AEY], YEC has more risk.”[16]
32. AEY has applied for a .75% risk premium, while YEC in its concurrent application has applied for a .45% risk premium.[17]

[13] Alberta Utilities Commission, 2023 Generic Cost of Capital, p 11
[14] Alberta Utilities Commission, 2023 Generic Cost of Capital, p 13
[15] 2023-2024 ATCO Electric Yukon General Rate Application, pdf p 20
[16] YUB Order 2009-2, p 29
[17] 2023-2024 Yukon Energy Corporation General Rate Application, p 83

33. Based on the determination of relative risks in Board Order 2009-02 and YECs application for a risk premium of .45%. the Yukon NDP argues that AEY should not be granted a risk premium of more than .25%.
34. AEY does not believe YEC to be an appropriate comparison for AEY because it is government owned rather than investor owned. The reason they provide for this is the distinction in "terms of raising capital, and the type of return you need to offer investors is different if you're a public company" [18].
35. However, the relationship between AEY and CUI as demonstrated earlier in this document is not unlike that between YEC and its owners, which is that it reduces the need to raise capital in a comparably competitive environment. For this reason, the Yukon NDP argues that the board should continue to view YEC as an appropriate comparator for AEY and award a risk premium based on that.
36. AEY provided a list of comparable utilities to demonstrate its relative risk in exhibit JPT-2. The only utility provided was Maritime Electric Company Ltd, every other company had either a higher or lower deemed risk compared to AEY[19].
37. During the oral hearing, Mr. Trogonoski could not provide a clear answer on AEY should receive a higher risk premium than Maritime Electric Company Ltd (MECL) when he has present them as being similarly risky to AEY[20].
38. First, he states that the AEY is much smaller than MECL and so an additional risk premium for AEY is justified. He then acknowledges that the assessment of the two utilities risks as 'similar' includes size risk, which undermines his argument for a risk premium above MECL, which did not receive a risk premium at all in 2023. If Mr. Trogonoski stands by his assessment of similar risks between AEY and MELC as he states during the oral hearing[21], the YUB should consider the fact that a similarly risky company did not receive a risk premium at all in it's 2023 settlement at the same 40% equity ratio as AEY.
39. Both the YUB and Mr. Trogonoski pointed out that the MECL ROE was a settlement process, rather than awarded through a GRA. In a GRA, the applicant makes its case for what it thinks is a fair return and the board decides on that, either to award what was asked, or a higher or lower figure. While we don't know the conditions under which the MECL settlement was made, it is important to consider that a settlement would have allowed MECL considerably more sway in the outcome than through a board order.
40. Mr. Trogonoski pointed out that MECL received less (9.35%) in their settlement than they applied for (9.95%)[22] but since this was a settlement agreed upon between two parties, the Yukon NDP argues that MECL found 9.35% to be a fair return on equity for their utility which is comparable to AEY. So, by AEYs own evidence, the only comparably risky utility in the country agreed to an ROE of 1.05% less than what AEY is asking for. The Yukon NDP argues that if MECL found 9.35% to be a fair ROE, that AEY would find the same, given their comparable business risks.
41. AEY lists a number of risks associated with the energy transition as a driver of the need for an increased risk premium both in its application, and during the oral hearings. One of the reasons

[18] AEY 2023 GRA Transcript Volume 4, November 30, p 8
[19] Exhibit JPT-2 Risk Premium Comparison
[20] AEY 2023 GRA Transcript Volume 3, November 29, p 189-192
[21] AEY 2023 GRA Transcript Volume 3, November 29, p 191
[22] AEY 2023 GRA Transcript Volume 3, November 29, p 189

they view it as a risk is cited as lack of control over government policies like the Independent Power Producer and Microgeneration programs.

42. Jay Massie in response to Roger Rondeau of the UCG, stated that the IPP began in 2015 and that the Micro-Generation program was similar[23]. For clarification, the Micro-Generation program was announced in 2013, two years before the IPP.
43. Mr. Trogonoski later stated that the energy transition, in relation to government policy on increased electrification and fuel switching was "…probably an issue that has arisen in the last five years. It definitely was not an issue in the 2016 and '17 GRA."[24]
44. The Yukon NDP argues that the existence of both IPP and Micro-Generation prior to the 2016-2017 AEY GRA makes a clear case that the energy transition had begun and was underway at that time, despite the testimony of Mr. Trogonoski cited in paragraph 41 above.
45. As a result, the Yukon NDP argues that the YUB should not accept the risks associated with the energy transition as an increased since their last GRA.
46. Lastly, during an exchange with Mr. Rondeau, Beth Rogers argued against Performance Based Regulation of Yukon Utilities in part based on the relatively stable costs of AEY[25].
47. There is a litany of perceived risks cited by AEY as potential problems for their business throughout their application - including the energy transition, the Covid-19 pandemic, weather and more. If any of these risks were being realized, it is not hard to imagine that would have some effect on driving AEY costs either up or down.
48. The Yukon NDP argues that the remarkable ability of AEY to earn in excess of its allowed ROE despite the continued risks of the energy transition, 3 years of an economically disruptive global pandemic and increasingly erratic and unpredictable year-round weather demonstrates that the actual risks to AEYs business are much lower than they have been made out to be. As a result, the Yukon NDP argues that the current risk premium of .25% is sufficient to cover the risks faced by AEY.

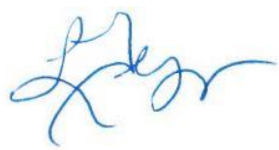
Conclusion

49. AEY has over earned its allowed ROE in every year since the last two test years. Much of the argument put forward in this document is based on that history, and the history of AEYS parent company.
50. These over earnings are bad for rate payers, no matter the class of customer. While the Yukon NDP has argued not to increase the allowed ROE and risk premium as AEY requested, there is a bigger issue at play. That is the fact that AEY has been able to over earn for so long without coming before the Board.
51. The Yukon NDP has sought answers from AEY, the YUB and the Yukon Government about who, if anyone, can compel a utility to come before the board with a rate application. None have given a clear answer, and this is a problem. When an IR was submitted to the Board about this, it was deemed inappropriate and that is fair. However, AEY and Yukon Government either do not know, or do not wish to make clear to the public who holds this power.

[23] AEY 2023 GRA Transcript Volume 2, November 28, p 9
[24] AEY 2023 GRA Transcript Volume 3, November 29, p146
[25] AEY 2023 GRA Transcript Volume 2, November 28, p 64

52. In addition to the above arguments relating to the 2023-2024 AEY GRA, the Yukon NDP will close by recommending that the Board request a direction from the Commissioner in Executive Council as per section 17(4) of the *Public Utilities Act*[26] to address this issue and provide clear guidance on who has this power, and how it could be applied.
53. It is the view of the Yukon NDP Caucus as intervenors in this rate application, that the applicant, AEY has not sufficiently made the case that their current fair return of 8.75% plus a .25% risk premium needs to be increased.
54. Based on AEYs relationship with Canadian Utilities Inc, AEYs historical earnings in excess of the fair return, and the applied for and agreed upon returns of the most comparable utilities, the Yukon NDP recommends that the fair return for AEY remains 9% and the Board should not consider their requested increase.

Respectfully,



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[26] *Yukon Public Utilities Act,* 2002, p 13