UTILITIES CONSUMERS' GROUP
Box 9300
29 Wann Road
Whitehorse, Yukon Y1A 4A2
email: rrondeau@northwestel.net

December 8, 2010

Yukon Utilities Board
Box 31728
Whitehorse, Yukon
Y1A 6L3

Attention: Deana Lemke, Executive Secretary

Re: Yukon Energy Corporation Application to Approve Alexco Resource Corporation Power Purchase Agreement

Dear Deana:

Please find enclosed the final argument submitted by the Utilities Consumers' Group.

Yours truly,

Roger Rondeau
President, Utilities Consumers' Group

YUKON UTILITIES BOARD

IN THE MATTER OF the *Public Utilities Act*
Revised Statutes of Yukon, 2002 c.186, as amended

and

IN THE MATTER OF an application by Yukon Energy Corporation for approval of a proposed power purchase agreement with Alexco Resource Corporation

FINAL ARGUMENT OF

UTILITIES CONSUMERS' GROUP

December 8, 2010

TABLE OF CONTENTS

Page

INTRODUCTION and OVERVIEW

The Utilities Consumers' Group

1. The Utilities Consumers' Group ("UCG") is a not-for-profit organization registered as a society in the Yukon since 1993. The UCG represents residential and small business ratepayers in regulatory procedures, conducts research, makes submissions, communicates with active stakeholders, including government, and helps consumers concerning any type of problem with utility service providers.

2. UCG submits that the review of the proposed Power Purchase Agreement (PPA) between Yukon Energy Corporation (YEC) and Alexco Resource Corporation (Alexco), insofar as it is a process undertaken pursuant to legislation, is a process that remains concerned with the viability of the PPA as an instrument protecting ratepayers and taxpayers from the risks of the mining operations. Accordingly, UCG respectfully submits that the proposed PPA does not demonstrably protect the total investment, whether that investment comes from ratepayers or taxpayers.

Summary of UCG's Position

3. This submission summarizes positions of the UCG for the Yukon Utilities Board's (the "Board") consideration. It should not be assumed that the UCG is in agreement with YEC's position on any issue for which the UCG has not provided specific comment on in this argument. Where the UCG has not specifically addressed an issue, it is believed that the Board has the benefit of arguments of other intervenors and the record in this proceeding to make informed decisions.

4. The public review of YEC's proposed power purchase agreement with Alexco has raised many important issues for current and longer term consideration. Of particular concern is the lack of a cost of service analysis which ensures that the rates proposed in the proposed power purchase agreement are based on a comprehensive cost of service study and recover all costs associated with the proposed services. The UCG submits that the Board should consider making very specific decisions in this regard as part of this proceeding.

5. Ultimately, the purpose of the Board's review is to ensure that the proposed power purchase agreement and related rate proposals would be a reasonable course of action to ensure that ratepayers are properly protected from the adverse impacts that have traditionally been associated with large industrial services in the Yukon. UCG cannot support YEC's position that the Board does not have the jurisdiction to approve the proposed PPA in its entirety rather than just those parts YEC feels the Board should approve.

6. While YEC has asserted that Yukon ratepayers would not be adversely affected by the expenditures required to service Alexco, UCG submits that the lack of any guarantees indicates that there remains a very real possibility that Yukoners (as electricity ratepayers and taxpayers) will end up paying more of the costs of the proposed service than YEC is indicating.

7. UCG submits that not all of the costs of the proposed service have been identified and properly included in costs proposed to be recovered from Alexco. In particular, UCG believes that Major Industrial Customers should be responsible for paying YEC's costs to negotiate PPAs (nearly $100,000 in this case). As well, all the regulatory costs for these types of specific purchase power proposals should be included in the Alexco costs.

8. Also, it is not clear how the new positions created at YEC[1] to address the increase in activity with regards to major capital projects (e.g., Carmacks-Stewart transmission line) have been incorporated into the proposed rates to be charged to Alexco.

9. UCG submits that there are several risks that have not been considered or quantified in the assessment of the proposed service including: (1) the operation, maintenance, and possibly major repair costs associated with the transmission line (a negative impact); (2) the ultimate rate impact the new mines and lines may have on a reallocation of costs as between the major industrial customer rate class and other rate classes (an impact that YEC suggests is probably positive on non-industrial rates but no definitive analysis on longer term impacts should the mines close prematurely); and (3) the displacement of secondary sales as a result of the addition of mine loads (a negative impact).

10. In other words, UCG submits that YEC has not identified any real benefits of this PPA to the firm ratepayers of the Yukon. Conversely, it has clearly identified a negative impact to firm ratepayers (i.e., diesel on the margin). UCG has identified several other impacts or possible impacts above.

11. UCG's overall position is one of caution. The UCG is not convinced that parties know enough about the downside for ratepayers / taxpayers of proceeding with the proposed service as accounted for within the proposed PPA. UCG also cautions the Board to the fact that this purchase power agreement sets precedents for future agreement with industrial customers.

12. The current Part 3 review is supposed to provide an opportunity to not only ensure that the proposed power purchase agreement is properly understood and conditions added, but also allow for a more comprehensive review of proposed costs and alternatives and for conditions to be set to protect ratepayers and taxpayers from getting stuck with higher than expected costs. UCG submits that the review of the proposed PPA was significantly hampered by the lack of detailed review of the scope, variability, applicable risk factors and contingencies that may affect the mine's operations and viability.

[1] YEC 2007 Business Plan, page 9

FIRM MINE RATES and FIXED CHARGES

20. The Board has been asked by YEC to approve a Firm Mine Rate for initial delivery of Mine Firm Electricity by YEC to Alexco and certain conditions within the proposed power purchase agreement.

21. The Rate Policy Directive (OIC 1995/90) states that the Board "must ensure that the rates charged to major industrial power customers, whether pursuant to contracts or otherwise, are sufficient to recover the costs of service to that customer class; those costs must be determined by treating the whole Yukon as a single rate zone and the rates charged by both utilities must be the same"[2].

22. OIC 1995/90 also states that normal rate setting principles must apply in that the Board must "review and approve rates in accordance with principles established in Canada for utilities, including those principles established by regulatory authorities of the Government of Canada or of a province regulating hydro and non-hydro electric utilities"[3].

23. UCG submits that YEC has failed to comply with both of these provisions of OIC 1995/90. The intent of the single rate zone provision is to ensure that when rates are being designed, the entire revenue requirement associated with the supply of electricity in all of the Yukon is taken into account and equitably allocated to various rate classes. Normal rate setting principles for any regulated utility imply that cost-based rates are established based on a comprehensive cost of service study. With respect to the proposed monthly fixed charge to Alexco, YEC has not provided the required comprehensive cost of service study for the Yukon rate zone.

24. UCG submits that the current application for a firm mine rate counters YEC's own arguments regarding rate setting principles. There has been no evidence submitted on the integrated costs of YEC and YECL to allow for a determination that the proposed firm mine rate and monthly fixed charge truly recovers the fully-loaded cost of the service provided.

25. In response to an information request during the review of the 20-year Resource Plan[4], YEC states:

    For this reason, the firm industrial rate in Yukon remains interim and refundable (since Board Order 1998-5) and is expected to be finalized and confirmed for new industrial customers <u>only after a full COS study is performed for the Yukon as a whole</u>, and that a new rate based on this COS study is reviewed and approved by the Board.

26. In the 2005 Revenue Requirement proceeding, YEC's witness testified about the need to strive for least overall cost:

---

[2] OIC 1995/90, section 6(1).
[3] OIC 1995/90, section 3.
[4] YEC response to UCG-YEC-2-2, 20-Year Resource Plan Review

MR. OSLER: A: One of the principles that both utilities should be striving to achieve is to serve their customers at the least overall cost, and in the context of Yukon under the Order in Council that we both work under, the rates will reflect the integrated costs of both utilities. So whether you're a YEC customer or a YECL customer, in the end you are affected by the success that each utility has in serving their needs and requirements at the least cost.[5]

27. UCG submits that without a comprehensive cost of service study for the Yukon rate zone, even YEC admits that the Board could not determine that the proposed firm mine rate actually ensures that the needs and requirements of all Yukon electricity customers (including proposed industrial customers) are being met at the least cost.

28. YEC has testified previously that customers in a given period should pay the costs that are necessary to provide them services in that period.

MR. McMAHON: Q: Thank you. In the Energy Commission report there was a certain amount of discussion on regulatory principles that Mr. Osler had addressed the previous day, and the Commission indicated that an underlying principle of regulation is that customers in a given period should only pay the costs that are necessary to provide them services in that period. Does the panel agree with that principle?

MR. OSLER: A: Certainly in terms of fundamental, normal principles of regulation of rates. One of the major considerations is what they call intergenerational equity. It's got nothing to do with generation of electricity, it's to do with generations of people, and you should be trying to make sure that the costs borne by each set of -- each people in each time period, certainly in terms of -- the word "generation" implies maybe more than the just the test year -- are reflecting the costs that exist to serve them. Just as you try and balance costs over space or between classes, you are trying to balance them between people living in different time periods. So they reflect the costs that are there. That's a fundamental principle, one of many you have to think about and balance in order to come up with rates."[6]

29. The UCG submits that there is no evidence on record in this proceeding that the rates proposed to be charged to Alexco reflect the actual, fully loaded costs of serving the industrial class of customer. YEC admits that a cost of service study was not used to determine the annual Transmission Facilities costs that were used to determine rates proposed to be charged to Alexco[7].

30. The UCG submits that YEC did not conduct adequate public consultation on the proposed firm mine rate and so did not adequately maintain public accountability, transparency and understanding of the impact of the proposed power purchase agreement. YEC has not provided sufficient opportunity for electricity ratepayers to understand the implications of the proposed firm mine rate.

---

[5] 2005 Revenue Requirement Application, Transcript Pages 102-103

[6] 2005 Revenue Requirement Application, Transcript pages 646-647

[7] UCG-YEC-1-3(a)

31. The UCG submits that well governed utilities solicit stakeholder input during development stages of new rate design proposals. Methods for collecting that input should include stakeholder collaboratives, information meetings and workshops. UCG submits that simply making a submission to the YUB without advance discussion is not an effective process.

32. UCG submits that there is a significant difference in the proposed application versus the situation when NCPC was instructed to build the transmission line to Cyprus Anvil Mining Corporation and directed to recover only 85% of the cost of the transmission line from CAMC[8]. Alexco is the driver of the need for transmission facilities since approximately 98% of the energy use on the Mayo-Keno transmission line will be by Alexco. UCG submits that Alexco should be responsible for a much higher percentage (i.e., 98%) as their use requires.

33. UCG submits that while YEC believes that it is only the presence of a loan to a mine which drives the need for a take-or-pay arrangement, it is the transient nature of mines and their operations in the Yukon that drive the need for take-or-pay provisions to ensure that the remainder of Yukon ratepayers are protected. UCG submits that a take-or-pay provision should be in place for Alexco for the fixed charge and its forecast load upon which all other Yukon rates are determined. UCG submits that given the limited life of mining operations in the Yukon in recent history, it would be better to offset mine-related costs in the early years of operation when the commodity prices are most likely to be high.

34. UCG submits that YEC has not been clear on the use of electricity at other than the mill and mine and how it will be billed (e.g., Alexco camp facilities) other than to say that "other existing points of delivery served under other rate schedules are not covered by the PPA"[9]. UCG submits that if Alexco is to have one bill issued for all Points of Delivery to be charged under the Firm Mine Rate, resulting in one monthly Fixed Charge, one demand charge, and one energy charge[10], then they must be clear which points of delivery will be under other rate schedules and under what rate schedule.

35. UCG submits that YEC has clouded the issue of how all points of delivery will be billed especially where electricity is being used to supply space heating facilitation[11].

36. UCG submits that YEC's application to combine Alexco accounts under one bill is an attempt to arbitrarily change the current Electric Service Regulations prior to the Board making a determination on revised Terms and Conditions of Service. UCG submits that the bill combination proposed conveniently puts Alexco into the Major Industrial Customer class for which rates have been arbitrarily fixed by the Yukon government for several years. UCG also questions the reasoning of why the half mile radius is presently incorporated in the present ESRs if it can be randomly changed for specific customers.

---

[8] UCG-YEC-1-4
[9] UCG-YEC-1-6(d)
[10] PPA section 6.1, LE-YEC-1-5
[11] UCG-YEC-1-1 and UCG-YEC-1-6

37. UCG submits that YEC has not provided any evidence that the mill not only fired up in early November but that the system has been able to effectively handle the load requirements of some 600 or more motors and pumps at the same time thus qualifying as a major industrial customer. If YEC is requesting that industrial rates be charged to Alexco in November or into the future months, it should be required to prove that industrial-sized service has been required for the continued monthly period. Otherwise, UCG submits that Alexco pay full commercial general service rate for mine, mill and all other delivery points for those months not qualifying as industrial.

38. YEC infers that both the mine and mill use electric heat (i.e., back-up generators are designed to provide energy to heat and keep operations functional in the case of a power outage)[12]. UCG submits that Alexco should be required to pay a premium rate for electric heat just as YEC has proposed for those residential and general service customers using electric space heating.

39. YEC implies that the Board does not have the jurisdiction to approve the proposed Power Purchase Agreement[13]. UCG submits that the *Public Utilities Act* provides the Board with jurisdiction over rates which includes in its definition a "*contract of a public utility relating to a rate*". Also, section 31 of the *Public Utilities Act* clearly states that "*Any contract for the supply of a service to a person by a public utility that sets a fixed or variable rate either for a present or future supply of the service is deemed to include a clause under which the board has the jurisdiction, on application of one of the parties, to increase or reduce the rate to a rate that the board considers fair and reasonable.*

40. UCG submits that the proposed PPA should not be effective until after YUB approval has been issued. This was the case for the Minto PPA and should be the case here.

OIC 2007/94 – MAJOR INDUSTRIAL CUSTOMER DIRECTIVE

41. Schedule A to OIC 2007/94 states that "Demand and Energy charges for the directed changes are to be escalated once each calendar year, starting January 1, 2010, based on the latest percentage increase in the 12 month implicit chain price index for gross domestic product at market prices for Canada as reported by Statistics Canada". YEC has a commitment to provide the YUB with a letter annually to explain and identify any required adjustment.

42. YEC indicates that there was no required rate adjustment in January 2010[14] but it is not clear whether any documentation was submitted to the YUB. YEC indicates that based on the latest data, there is a requirement pursuant to OIC 2007/94 to escalate the Major Industrial Customer demand and energy charges at this time by 2.8% although no backup documentation has been provided. It is interesting to note that it wasn't until after questioned on this issue during the current proceeding that YEC submitted a letter to the YUB requesting an increase to Minto's rates. If the attachment to YEC's response to UCG-YEC-1-3 is YEC's full application to adjust

---

12 UCG-YEC-1-1(d)
13 UCG-YEC-1-2
14 UCG-YEC-1-3(e)

Minto's rates, then UCG submits that a public review and comment period would be appropriate to ensure full transparency. UCG submits that YEC should have already adjusted its current application related to Alexco's rates and applied to the YUB to adjust Minto's rates.

43. UCG questions YEC's accountability in this regard given the *Public Utilities Act* requirement (section 28) to have YEC make an application to the YUB 90 days before it proposes to charge a different rate. UCG questions how a letter dated November 30th satisfies the 90-day requirement.

44. YEC indicates that it expects that baseload diesel generation will be required on the Mayo Dawson grid over the 2010/2011 winter to supply the overall system load including the Alexco facilities[15]. If diesel will be on the margin this winter, UCG questions what will happen when Alexco ramps up its electricity requirements as they have suggested. UCG submits that Alexco should be responsible for some additional infrastructure costs (as Minto was in the past) such as those related to the Carmacks-Stewart transmission line and Aishihik 3. As well, into the future, as Alexco has stated they will require more energy and as such they would be responsible for some of the capital costs for Mayo B. Other mine possibilities, such as Eagle Gold, who are now applying through YEESAB are stating they will require 11 MW of power. If Alexco is given a free ride on infrastructure costs needed to provide these mines with present and future needs, then all industrial customers will request this preference when it is time for their purchase power agreement. Certainly no common sense would buy into the fact that the major transmission grid connections, Aishihik 3 and Mayo B are being constructed for future residential or small business customers.

CAPITAL COST CONTRIBUTION

45. The Board has been asked to approve the provisions respecting the Capital Cost Contribution as set out in the proposed power purchase agreement.

46. UCG submits that it is not clear whether some of the costs recovered from Alexco are already being recovered from other ratepayers (i.e., staff costs, overheads, etc). It is also not clear how parts of the fixed charge to be paid by Alexco will be held for other ratepayers to offset costs currently included in rates charged to other customers[16]. UCG submits that YEC should be directed to establish a mechanism in which these funds will be collected and subject to regular audit.

ONGOING REPORTING TO YUB

47. UCG submits that YEC should be directed to provide the YUB and interested parties with regular reports of the electricity requirements of the Alexco facilities as they are proposed to be provided to YEC each year by Alexco. UCG submits that this will allow the Board to provide direction on

---

[15] UCG-YEC-1-17
[16] UCG-YEC-1-9

a more timely basis should actual electricity requirements start dropping significantly and potentially drive the rates of other Yukon ratepayers.

OTHER ISSUES

48. The Board has been asked to approve a proposed power purchase agreement that YEC claims will benefit all ratepayers and the Yukon as a whole. UCG submits that these benefits are not completely known given the uncertainty created by YEC by not providing information related to the whether any of the parties to the proposed PPA (other than YEC) operate or intend to operate permanent offices within the Yukon[17]. UCG submits that this kind of information is basic business case information that should be provided by YEC and anyone else submitting projects that are justified by the perceived “greater good” that they will provide the Yukon. UCG submits that the lack of transparency on the simple issues casts doubt on the transparency provided on the more complicated issues in this type of application.

49. YEC indicates that it did not rely on a mining / milling operations feasibility study and / or business case analysis to proceed with the proposed PPA with Alexco[18]. UCG submits that this lack of due diligence does not allow the Board and other parties to adequately evaluate how likely it is that Alexco’s operations can be relied upon over the long-term to provide the claimed benefits to Yukon ratepayers. UCG submits that YEC has failed to provide the evidence necessary to justify moving forward with the proposed PPA.

50. UCG submits that YEC continues to peck away at established definitions (e.g., the need to vary the definition of Major Industrial Customer used in the proposed PPA from that legislated for use in the Yukon for rate setting purposes)[19] for its own purposes rather than pursue changes through a more comprehensive approach. UCG agrees that there will always be adjustments needed to things like legislated definitions, but an application to approve components of a proposed PPA is not the proper vehicle. UCG submits that it is contrary to common sense to incorporate definitions within a contract that do not match those established by government for the Board.

51. YEC states that the costs associated with this hearing should be placed under regulatory costs and paid for by all ratepayers[20]. UCG submits that any costs that can be directly assigned to a specific customer or customer class should be in accordance with cost of service principles.

52. UCG submits that components of the proposed PPA have been expanded upon and clarified by the evidence accumulated during this review process subsequent to YEC’s original application. UCG submits that this should be captured in some way within the proposed PPA since it is too easy for time to erode the understanding of specific references. UCG submits that the Board should direct that clarification should be added throughout the proposed PPA.

---

[17] UCG-YEC-1-13

[18]

[19] UCG-YEC-1-15

[20] YUB-YEC-1-6

53. To conclude, the UCG submits that the proposed YEC /Alexco PPA should be sent "back to the drawing board" incorporating all concerns and directions coming out of this process. Until such time as a comprehensive agreement is brought forward for approval by the Board, UCG submits that Alexco pays the commercial general service rates for all points of service.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8th DAY OF DECEMBER, 2010