YUKON ENERGY CORPORATION

MINTO MINE PPA
APPLICATION

REPLY ARGUMENT

April 10, 2007

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1.0 INTRODUCTION

Reply Argument Scope

Yukon Energy Corporation's ("**YEC**'s" or "**Yukon Energy's**") Reply Argument responds to arguments filed on April 4, 2007 by Yukon Electrical Company Limited ("**YECL**") and the Utilities Consumers' Group ("**UCG**"), and on April 5, 2007 by Peter Percival ("**PWP**"), with regard to Yukon Energy's Application of February 8, 2007 seeking Yukon Utilities Board (the "**YUB**" or the "**Board**") approval of the Power Purchase Agreement ("**PPA**") between Yukon Energy and Minto Explorations Ltd. ("**Minto**") for the supply of electricity by YEC to the Minto copper-gold project (the "**Mine**"). The PPA includes provision for Yukon Energy to develop transmission facilities (the "**Transmission Facilities**") as part of the Stage One development of the Carmacks-Stewart Transmission ("**CS**") Project, including a spur line (the "**Mine Spur**" or the "**MS**" Project) to be developed concurrently to connect the Mine to the CS Project in order to deliver surplus hydroelectricity from the Whitehorse-Aishihik-Faro ("**WAF**") grid to the Mine, displacing significant on-site diesel generation.

Overview of Intervenor Arguments

In summary, the intervenor arguments display both similarities and differences in focus and approach:

1. **YECL:** The YECL Final Argument focuses on eleven issues that YECL submits must be addressed by the Board, on the grounds that "failure to adequately address these matters should lead the Board to conclude that the proposal, as currently structured, is unacceptable". The eleven issues cover some matters not addressed in the Application and exclude other components identified in the PPA for specific Board approval. Overall, YECL's issues include concerns relating to how the capacity planning criteria are applied to Minto, the financing of the Capital Cost Contribution as a "utility investment" and the quantum of the $7.2 million CS portion of this Minto capital cost contribution, and the Mine Net Revenue Account addressing rate stability rather than intergeneration equity objectives. YEC will address separately the substantive issues in each of the eleven issues raised by YECL.
2. **UCG:** The UCG Final Argument can be characterized as consisting of two basically different parts:
   a. **Comments on process-related matters**: Almost half of the UCG Final Argument (paragraphs 2 to 28) focuses on process-related matters that, in YEC's view, are not relevant to the issues currently before the Board and have already been addressed by the Board in past motions and subsequent rulings, including assertions that YUB decisions on the PPA are 'premature' and 'subjected to unreasonable timelines' if reviewed before the Part 3 review, that PPA decisions should be 'interim' pending the Part 3 review, that 'without due diligence findings, it is impossible to complete a full review,' and that the Board should consider now various UCG positions relating to the CS Project that presumably will be argued in the Part 3 review and that do not relate to the PPA Application.

b. **Comments on specific PPA components:** Starting at paragraph 29, the UCG Argument provides brief comments on each of the specific components identified in the PPA for specific Board approval. Overall, UCG expresses various concerns and seeks specific changes to certain components of the PPA, including delay in rate approvals, removal of section 3.5 provisions to extinguish the YEC Security relating to the Minimum Take-or-Pay Amount, and flowing income benefits directly into rate reductions in the initial years of Mine operation. YEC will address separately the substantive issues for each PPA component raised by UCG of relevance to the current process.

3. **PWP:** The PWP Final Argument provides comments on each of the specific components identified in the PPA for specific Board approval. Overall, the PWP Argument rejects the PPA, or, in effect, proposes that the YUB order material changes to the PPA structure as well as all components of the PPA other than the Peak Shaving Rate; among other submissions, this Argument proposes deferring all final rate approvals until a full cost of service ("COS") and new rates are reviewed by the YUB, and ordering Minto to pay upfront (before YEC starts construction) all Capital Contribution Costs and Decommissioning Costs. YEC will respond to each of these issues.

Context for YEC Reply

Overall, the PPA provides a critical and important opportunity to proceed with major new infrastructure developments that are expected to secure substantial benefits for Yukon ratepayers over the next decade as well as for decades to come.

Pursuant to section 3.1 of the PPA, approval of this PPA is a precondition to the continuation of the rights and obligations between the Parties as set out in the PPA, and also remains a requirement for continued work on the Carmacks-Stewart Transmission Project, i.e., the new $10 million of YTG funding for Stage One of the CS Project is contingent on Board approval of the PPA. If not approved by the Board, the PPA could be terminated which would jeopardise the substantial benefits accruing to the Yukon and to Yukon ratepayers.

YEC's Reply Argument underscores the extent to which the PPA, as negotiated, is an integrated package designed to address multiple interests and objectives. In addressing the issues raised by intervenor arguments, YEC submits that the reasonableness of the PPA's provisions, combined with considerations regarding the ultimate benefit that the negotiated PPA and its provisions will have in the Yukon, has only been confirmed. None of the issues raised by intervenors are of sufficient materiality to sway the Board's opinion against approval of this PPA in its current form.

In numerous instances the intervenors have attempted to summarize the information provided by YEC in response to various information requests. Unfortunately, on many occasions the summary is not accurate and therefore YEC strongly suggests that the Board refer to the relevant IRs before relying on the various summaries provided.

Format of Reply Argument

The Reply Argument generally follows the headings in the YECL Argument. The main headings are as follows:

- Capacity Planning Criteria
- Capital Cost Contribution (includes Quantum of Capital Cost Contribution [$7.2 million CS Project contribution], YEC's Financing of Capital Cost Contributions [CS and MS Project Contributions], and Maximum Utility Investment)
- Mine Deferral Account
- Material Adverse Impact to Minto Savings / Minimum Take-or-Pay Provisions
- Firm Mine Rate / Cost of Service (includes COS and Firm Mine Rate, Rate Modifications Applicable to Rate Schedule 39 [Rider F, Billing Demand issues, Peak Shaving Rate], and Applicability of Rates to YECL Service Territory)
- Rate Schedule 35 (Secondary Sales) / Measured Demand / Confirmation of Low Grade Ore
- Purchase of On-Site Diesel Units
- Decommissioning Costs

2.0 CAPACITY PLANNING CRITERIA

YECL provided the only argument addressing capacity planning criteria.
YECL submits (based on YECL-YEC-1-2) at the outset of its Final Argument that there is an outstanding "misunderstanding" between YEC and the Board regarding YEC's capacity planning criteria applicability to industrial customers[1], and submits that "a determination needs to be made in the context of these proceedings regarding whether or not LOLE includes or excludes industrial load and specifically, the Minto load." YECL argues that the outcome of such clarification "would materially affect the manner in which the PPA is considered and addressed."

YECL further states that industrial load is excluded by YEC from the N-1 capacity planning criteria "on the basis that industrial customers would have their own backup supply on site," and asserts that Minto may not meet this test because "once Minto has sold its existing diesel units to YEC it will not, in fact, have such onsite generation…YEC and Minto cannot say for certain that there will be onsite supply, which is a fundamental premise of being excluded from the N-1 criteria."

YECL concludes its submission as follows on this issue: "The end result appears to be that the Minto firm load should appropriately be included in both LOLE and the N-1 planning criteria." Based on this conclusion, YECL then states:

> "As such, serving the load of Minto will result in a requirement for new generation facilities under the N-1 criteria at the onset of grid service to the mine. New generation facilities will also be

[1] Based on YECL-YEC-1-2, YECL correctly notes that an underlying premise of the PPA contemplates firm service, 'but the Board [in its January 15, 2007 Report] appears to be of the view that this is not the case (by excluding industrial load from the LOLE calculation)." YEC has stated in the referenced IR that the capacity planning criteria adopted by YEC includes industrial load in calculation of LOLE.

required under the LOLE criteria sooner than would be the case if the mine did not receive grid service. These consequences need to be properly considered before the PPA moves forward.[2] "

Yukon Energy Reply

Since YECL did not fully participate in the Resource Plan Hearing, YECL may not fully understand YEC's position with regard to capacity planning criteria. In summary, as reviewed below and completely contrary to YECL's submission, YEC's evidence in this proceeding (in response to YECL-YEC-1-2 and YECL-1-9(c)) and in the Resource Plan Hearing confirms that serving the Minto Mine at the firm loads provided for in the PPA will have no impact on YEC capacity planning requirements under either the LOLE or N-1 criteria during the Mine's expected life; if anything, the PPA (through YEC's purchase of the Diesel Units) will provide a net reduction (saving) in new generation facilities required under the capacity planning criteria.

YEC confirms the LOLE criteria which was used in assessing the PPA includes industrial loads while the N-1 criteria does not. However, there is obviously confusion about the Mine's overall diesel unit capability. The four Diesel Units addressed in the PPA will be surplus to the Mine's emergency backup needs after start of grid service by YEC. Other smaller units (approximately 500 kW) will be retained by Minto at the Mine for emergency backup purposes.

For greater clarity, YEC's more detailed response on this issue is summarized as follows:

- As per the Resource Plan submission, the WAF system is designed to incorporate mine loads and the LOLE criteria is based on the principle that the system will be planned to ensure reliable service to all customers including mines and other industrials:
  - The LOLE criteria is comparable to criteria in other Canadian grid systems, and it ensures that <u>all</u> firm loads (including industrial customers such as Minto receive reasonable utility-grade supply from the system.
  - The N-1 criteria is included as an added "emergency criteria" to address the seriousness of sustained outages in Yukon of a critical system component (eg., the Aishihik transmission) during the period of peak winter loads; it is calculated to include firm loads, excluding major industrial loads. The Resource Plan noted that major industrial loads in Yukon (i.e., mines) "typically" have their own on-site diesel generation for emergency purposes[3].
- As reviewed in YECL-YEC-1-2, under the above criteria, mines will be served as firm customers (not as interruptible customers). Because secondary energy sales customers are interrupted based on lack of surplus hydro capability, they are interruptible customers and therefore are not taken into account in N-1.

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[2] YECL raised this point about the Mine causing a need for new generation again (alleging YEC has ignored this added cost) under other parts of its argument, e.g. Maximum Utility Investment at page 10, Mine Deferral Account at page 13, as well as implied reference under Cost of Service at page 14.

[3] "Emergency" backup for a mine implies sufficient capability to protect essential systems and camp needs, and would not imply capability to supply power as needed for normal mine operation.

- The PPA was negotiated based on YEC's currently adopted capacity planning criteria as reviewed above, and the following points are noted:
  - The service to the Mine provided by YEC under the Firm Mine Rate is intended to be firm service that would be provided to Minto in all hours of the year, whether from hydro or from diesel, to a utility standard (long-term average LOLE of two hours per year).
  - The four Diesel Units that Minto will use at the Mine until Commencement of Delivery by YEC, when Grid Electricity will be provided by YEC, will not at any time be considered "emergency backup" generation supply at the Mine. Minto will at all times have approximately 500 kW of additional backup power (of the type assumed in the Resource Plan Hearing) at the Mine to meet needs in emergency circumstances.

YECL's assertion that service to the Mine will require new generation to be advanced in order to meet the LOLE and/or N-1 criteria is incorrect. As reviewed in detail during the Resource Plan Hearing, the impact of YEC's new capacity planning criteria is not expected to show any new generation requirement related to the Minto Mine loads (i.e., up to 6.0 MV.A as per Section 4.1 of the PPA). For further clarification the following is noted:

- Mine loads do not contribute towards peak loads for N-1 calculations but do contribute for LOLE.
- Under Base Case load scenarios on WAF without any mine loads, N-1 is requiring additions of capacity approximately 6.2 MW ahead of LOLE requirements.4
- Accordingly, the first 6.2 MW of new industrial load on WAF does not drive any additional generation capacity requirements over and above the basic base load requirements.
- The Minto maximum load as provided for in the PPA is less than 6.2 MW even if this load has a power factor of one.

Accordingly, the Minto load will not drive any near term requirement for new WAF generation and YEC's purchase of the Diesel Units will provide net generation capacity benefits to WAF by adding capacity without adding any new requirement.

3.0 CAPITAL COST CONTRIBUTION

All three intervenor arguments addressed Capital Cost Contribution issues. Following YECL's argument, these issues are addressed below under three headings:

- Maximum Utility Investment (MUI);
- Quantum of Capital Cost Contribution ($7.2 million CS Project Contribution); and
- YEC Financing of Capital Cost Contributions (CS and MS Project Capital Cost Contributions).

[4] See Resource Plan Overview, pages 20/21. See also, Resource Plan Submission, section 3.3 (page 3-24) and Section 4, page 4-12. The Resource Plan projections show no change in the 6.2 MW differential over the life of the Minto Mine. As reviewed in the Resource Plan, addition of a second mine concurrent to the Minto Mine load would change this situation, - in which case the Mine Diesel Units capability would be particularly relevant.

3.1 MAXIMUM UTILITY INVESTMENT (MUI)

YECL is the only intervenor to argue this specific issue.

In sections 3 and 4 of their argument, YECL in effect submits that Yukon Energy should have applied a "Maximum Utility Investment" (MUI) framework to the PPA, that failing to apply such an approach sets a "dangerous precedent for the provision of service to industrial customers" in Yukon, and that the approach YEC has taken to negotiate a PPA with Minto involves "significant costs," is "one-off" or "haphazard," and may not ultimately lead to fair treatment for all customers.

In light of these considerations, and the expectation that other industrial customers may also be looking to interconnect to the grid, YECL submits that "a far more prudent course of action would be to develop a Board approved MUI for industrial customers…[that] would include provisions for customers with shorter than normal (25 year) life expectations." YECL implies that no such policy for industrial customers currently exists in the ESRs, and suggests that the ESRs only address the MUI for General Service Customers.[5]

YECL submits that an MUI for the current project "would not likely be the $7.2 million number put forth in the Application [for Minto's CS Project Capital Cost Contribution] or as highlighted by YEC in their response to YUB-YEC-1-7, as YEC has ignored generation costs in arriving at this number."

YECL also alleges that in YUB-YEC-1-7, "YEC states that it has not considered how the principles in the Minto PPA might be applied to other major industrial or commercial customers."

Yukon Energy Reply

In reply, YEC disagrees with YECL's assessments and proposals on MUI related to the PPA as set out below:

1. Contrary to YECL's argument, the ESRs already provide Board approved policy directions as needed to guide maximum investment by YEC for industrial customer connections, including customers with shorter than 25 year life expectation.
2. Contrary to YECL's argument, the maximum utility investment approach per the approved MUI policy would increase rather than decrease YEC's current utility investment:
    a. The impact of using surplus hydro generation under the MUI approach is that Minto would not have provided any Capital Cost Contributions for either the CS or MS projects, and YEC's investment would have exceeded $12 million.
    b. Under the MUI approach, there is also no regulatory basis in any event (even if there was no surplus hydro) to require a customer contribution from Minto towards the CS Project since this transmission is planned as a system investment.

[5] YECL notes the MUI in Part III of Schedule B of the Electric Service Regulations (the "**ESRs**") for a General Service Customer with an estimated life of 25 years, and states that this MUI relates to the annual costs allocated to a specific customer including embedded generation and transmission facilities.

c. YEC financing of Minto Capital Cost Contributions differs fundamentally from a "utility investment" as contemplated by MUI policy, and serves to enhance rather than diminish ratepayer benefits.

3. In contrast to the MUI approach proposed by YECL, the PPA enhances ratepayer benefits by securing the maximum reasonable capital cost contribution from Minto to facilitate development of long-term infrastructure rather than only expanded connection to service this one mine; further, the PPA also requires Minto to pay fully for the Mine Spur.
4. Contrary to the YECL argument, the PPA also includes policy direction as to similar capital cost contribution requirements from any New Industrial Customers receiving Grid Electricity from either the Transmission Project or the CS Project.

Specific matters relating to MUI are reviewed in more detail below.

A Maximum Utility Investment (MUI) approach to determining the distribution of capital costs for local connection costs between the customer (customer contribution) and utility (the "Utility Investment", up to the stated maximum) is well accepted in Yukon. Such a provision has been a component of the ESRs since YEC was first before the YUB for rate regulation, is applied in all cases when connecting residential and commercial customers, and, YEC submits, also clearly provides for any industrial customer connection (including customers with an expected life less than 25 years).[6]

The premise of a MUI approach, however, is not only unrelated to providing service to Minto in the current special circumstances, it is antithetical to the objectives of the current PPA when the following is considered:

- The premise of an MUI approach is to allow for the maximum possible investment by the utility, while constraining the utility from over-investing in the connection to any one new customer such that other remaining customers are adversely impacted by the new customer. In other words, the MUI allows the utility to invest the entire net benefit of the new customer into the assets needed for the connection, but no more.
- In contrast, the PPA with Minto has sought to secure the maximum reasonable capital cost contribution by the industrial customer (Minto), thereby minimizing the investment needed by the utility, reflecting the special circumstances in this case where Minto can secure material cost savings by displacing diesel generation and YEC can secure major benefits from use of surplus hydroelectricity to serve the Minto Mine.

[6] Paragraph 3 of Schedule B of the ESRs clearly addresses <u>any</u> extension of service (including for Industrial customers, and for customers with less than an expected 25 year life) not covered under the standard provisions of paragraph 2 addressing residential, general service and other customers. Paragraph 3 reads as follows: "The Maximum Company Investment for an extension of service not specified in paragraph 2, and the Maximum Company Investment in any extension of service, whether or not specified in paragraph 2, the Load characteristics of which are expected to vary materially from the average for that type of service, shall be determined on the basis of a detailed analysis of the **Annual Cost** of such extension and the revenue expected to be derived therefrom. If the **Annual Cost** of serving a customer is higher than the revenue expected to be received from such service, then the Maximum Company Investment shall be the **Cost** of the extension less the present value of the annual amounts over the expected life of the service by which the **Annual Cost** is expected to exceed the revenue." The response to YUB-YEC-1-7 reviewed in more detail the application of this paragraph to the Minto Mine extension.

The MUI calculation determines the exact maximum amount that a utility can, and by inference should, invest in a new customer extension such that the benefits of the new customer match the costs; the net result is to limit the extent of any required upfront contribution by a customer in any such new extension. YEC's premise for connecting Minto and securing the material contributions under the PPA is not to ensure all benefits are invested by YEC (to enhance its returns on rate base) in the Minto Spur assets, or to limit the contribution required from Minto, but instead to ensure that the resulting enhanced benefits are used to secure substantial long-term positive rate impacts and infrastructure benefits for other ratepayers in Yukon.

At page 6 of YECL's argument, a quote is provided from an Alberta Energy and Utilities Board (AEUB) Decision that YECL suggests, captures the "balance" aspect of an MUI approach. However, YECL fails to include the companion part of the quote that captures the aspects of MUI that are noted above by YEC, or that limits customer contributions. The full quote relevant to the MUI issue is as follows:

> "...The Board considers that customer contributions are suitable in circumstances where service to a customer may impose costs on other customers for which they should not be responsible. An appropriate contribution policy therefore provides a suitable balance to an unlimited obligation to serve by imposing economic discipline on siting decisions. It transfers the economic burden of connection of new customers from the utility and its existing customers to the new customer. In other words, it exerts some of the discipline of the utility's economics on the economic decision-making of the customer. The Board considers that customer contributions should relate only to the local connection costs of the system expansion. The deep system costs of expansion are properly the responsibility of all customers, form part of the utility's revenue requirement and should be recovered from all customers through rates."

Had YEC used a simple MUI approach consistent with the Yukon ESRs and the above-noted AEUB decision to determine the capital cost distribution of the interconnection to Minto, three points must be noted:

1. **No Basis under MUI for any CS Project customer contribution by Minto**: It is not apparent what, if any, basis would exist under the MUI approach for Minto to have been required to make <u>any</u> up front customer contribution to the main Carmacks-Pelly Crossing portion of the CS Project. This 138 kV line is clearly not being planned as only a "local connection cost" for the sole benefit of Minto, but is for the long-term benefit of all Yukon customers and is far more consistent with a common or "deep system" cost. In this regard the PPA's $7.2 million customer contribution to the CS Project is clearly far more beneficial to ratepayers than the MUI approach apparently advocated by YECL.

2. **MUI approach would also provide no basis for any Minto customer contribution for the Minto Spur**: The MUI that would be calculated on the Minto Spur under the above

approach currently would approach $15 million, i.e., amounts well in excess of the estimated Mine Spur cost ($3.8 million estimate) Minto is providing by way of a customer contribution.[7]

3. **MUI differs fundamentally from Minto customer contributions financed by YEC**: YECL's argument consistently treats YEC financing of Minto customer contributions as though they were essentially equivalent to a utility investment by YEC such as that term is addressed by MUI principles. Although there are risk elements to YEC (and thus ratepayers) in each of these options[8], a "utility investment" by YEC is an investment that YEC plans to recover and earn a utility return on (interest and equity return) through rates charged to <u>all</u> ratepayers[9], whereas a "customer contribution" by Minto financed by YEC is planned to be recovered by YEC only though charges to only <u>one</u> ratepayer (Minto). In this context, YEC financing of

[7] This is demonstrated by the net present values (in 2008$) to YEC under the PPA for sales to Minto (Column 2 of Table C-1 of PPA Application, Minto at 32.5 GW.h/yr) over 8 years of service:

- **YEC Revenues from Minto**: present value of $19.0 million at PPA Mine Firm Rate, less
- **Incremental YEC Costs relevant to MUI:** Only $4.1 million present value incremental costs under Table C-1 are clearly relevant to MUI assessment to offset the above connection-related incremental sales to Minto, being generation-related costs of incremental diesel fuel and O&M ($2.2 million, NPV 2008$), and the Canada Flex Term Note ($1.9 million, NPV 2008$); lost secondary sales ($2.2 million cost to YEC[7], NPV 2008$) might also be considered, however the MUI provisions in Yukon do not at present make any provision for lost secondary sales as a "cost" of interconnecting a new customer (and in principle new firm loads are intended to displace interruptible loads).
- **MUI far exceeds Minto Spur Capital Cost:** Based on the above, the net benefits to YEC from the Minto connection equals from $12.7 million (if consider secondary sales losses as 'cost') to $14.9 million (without secondary sales being considered), and as such far exceeds the estimated capital cost of the Mine Spur ($3.83 million).

This assessment ignores potential added net benefits if provision for potential benefits from sales pursuant to the Low Grade Ore Processing Secondary Energy Rate is included or further increases to either Mine life or load levels, e.g., higher loads provided for in PPA and assumed in Table C-2. The assessment also excludes consideration of Table C-1 Pelly Crossing savings from grid connection (present value benefit to YEC of $0.6 million, and about $1.8 million if include YECL savings only for these 8 years), or added YEC costs for Diesel Units at the Mine (at most about $1.4 million present value, which, as noted, may act to offset diesel generation costs YEC would otherwise need to incur). The Table C-1 Incremental YEC Costs also include provision for balance of CS Project annual costs ($4.9 million present value), which are clearly not relevant for an MUI assessment of an MS connection (and now will be covered in any event by the YTG's new funding of up to $10 million). YUB-YEC-1-7 referenced an MUI approximating at least $7 million "based on the present value of Mine Net Revenue amounts in Table C-1", i.e., this calculation included costs for CS Project beyond the Minto contributions plus other cost elements as noted here that are excluded from the above more refined MUI assessment.

[8] MUI allows utility investments based on "expected" mine life and power load without any security or guarantees by the customer, and leaves the utility (and thus ratepayers) at risk if the mine life and/or power load is shorter or lower than expected. As noted in intervenor arguments, YEC financing of Minto customer contributions also exposes YEC (and thus ratepayers) to risk if mine life and/or power load is less than expected; however, in this regard the PPA expressly addresses this risk through various mitigative measures, e.g., YEC Security, Minimum Take-or-Pay Amount obligation, provisions to accelerate principal payments under certain circumstances, etc.

[9] The COS to the Industrial customer class (and thus rates charged to Minto) would be increased accordingly if the "utility investment" approach displaced Minto customer contributions; however, the added COS allocations to industry (and thus the added industrial rate provisions) would equal only a portion of the relevant capital costs rather than all of the costs covered in a customer contribution charged to Minto.

Minto Capital Cost Contributions is not a "utility investment" as this term is used for MUI policy.[10]

In other words, had Yukon Energy applied an MUI approach to the 27 km Minto Spur ($3.83 million) or to the full equivalent costs of developed 35 kV transmission from Carmacks to the Minto mine ($3.83 million for the spur plus $7.2 million for the Carmacks-Minto landing component, totalling $11.03 million) there would be no investment required from Minto at all, and Yukon Energy (and ultimately ratepayers) would contribute the full cost of the interconnection as a system asset. In contrast, the PPA obligates Minto to contribute the actual costs of the Minto Spur plus a fixed $7.2 million as well to the CS Project. It is hard to see this PPA approach as being a "dangerous precedent" for Yukon ratepayers.

3.2 QUANTUM OF CAPITAL COST CONTRIBUTION ($7.2 MILLION CS PROJECT CONTRIBUTION)

All three intervenor arguments expressed concerns that the $7.2 million CS Project Capital Cost Contribution is fixed, and not to be adjusted based on actual costs. The arguments differed as to details and remedies proposed, and are therefore separately addressed below.

3.2.1 YECL Argument

YECL notes a concern on page 2 of its Argument that "the evidence on record does not provide any reasonable basis upon which to assess whether the proposed $7.2 million fixed customer contribution is appropriate in the circumstances." YECL elaborates as follows:

- It is not opposed to charging Minto a customer contribution based on the least cost technically feasible alternative (e.g., a 35 kV line cost).
- The issue is the reasonableness of the estimated capital costs used to calculate the fixed $7.2 million quantum, stating that there is "no evidence supporting the reasonableness of using $85,000 per kilometre, a 10% mark up for permitting and design or even for using 12% for inflation and AFUDC"[11].
- Asserts the view that customers (e.g., Minto) should be required to pay a customer contribution based on the actual costs incurred with respect to construction, and that Minto should be assuming some of the construction cost risk regarding this contribution, not only YEC and its customers.

YECL goes on the argue the core point they apparently are asserting with regard to the CS Project customer contribution: "Regardless of the justification for the $7.2 million fixed customer contribution, YECL is of the view that the customer, Minto, should be required to pay a customer contribution based on

[10] One way to see the difference is in treatment of these options by the Mine Net Revenue Account, i.e., under the PPA (with enhanced customer contributions by Minto), net benefits from Minto power purchases flow to benefit ratepayers through Mine Net Revenue accruals, whereas under a "utility investment" option the earnings and recoveries related to this investment flow to YEC's shareholder.

[11] YECL notes YEC has only now contracted Wardrop, and suggests that Wardrop may also suggest modifications to the existing system and that the PPA means that "any and all modifications to the existing system will be paid by existing and future customers with none of the costs being charged directly to Minto." YECL concludes: "This treatment is unfair to other customers."

the actual costs incurred with respect to construction." The prime justification offered by YECL for this position is that Minto's savings from grid power are significant such that "Minto can be expected to assume the cost overrun risk (or receive corollary benefit of under spending) associated with the subject mainline facilities."

YECL offers two proposals "to establishing a reasonable and appropriate sharing of capital construction cost risk" for the CS Project portion (Carmacks to Minto Landing) of the Transmission Project:

- based on fixed share of 138 kV line actual cost (share calculated using $7.2 million as ratio of mid-point forecast costs of a 138 kV line portion); or
- based on per km actual cost of MS line applied to the distance for the segment of CS line used by Minto.

Yukon Energy Reply

In reply, Yukon Energy submits that there is no reasonable basis for the Board to jeopardize the PPA's sizeable benefits for other ratepayers in order to tinker with relatively minor refinements of the type proposed by YECL, particularly since such tinkering would strike at one of the fundamental negotiated elements in the PPA. YEC submits that the Application and IRs provide a reasonable and sound basis for the Board to determine, not only as noted above that the $7.2 million capital cost contribution far exceeds what might be reasonably required as a Minto contribution in the circumstances, but that YEC negotiated this fixed amount based on reasonable evidence and the best interests of other ratepayers.

Fundamental to YEC's approach in the PPA is that there are key differences between the customer contribution required for the Mine Spur and the negotiated contribution that Minto agreed to pay towards the costs of the CS Project. YECL's Final Argument demonstrates a lack of understanding of the critical differences underlying the function and purpose of each portion of the Transmission Project (as defined in the PPA) and how each unique function and purpose characterized the type of customer contribution paid by Minto towards YEC's capital costs.

YEC further submits that it is wrong to presume (as YECL does in its Final Argument) that there is any inherent obligation present in OIC 1995/90, the ESRs, normal ratemaking principles or past practice that would require Minto to contribute towards the cost of the 138 kV CS line segment. This 138 KV line segment of the transmission line is not being built for the sole use of a single customer,and the imposition of an obligation based on such an assumption cannot be reasonably argued as being required in the circumstances.

YECL's argument fails to recognize the following key points:

- **This is a negotiated amount that is not based on any regulatory requirement**: The $7.2 million capital cost contribution for the CS Project is a negotiated amount based on the mutual interests of the Parties and not an amount driven by any OIC, ESR, normal regulatory principle requirement or past Yukon practice, i.e., unlike the Mine Spur (where Minto is the sole expected user for most of the facilities, and where most of the facilities are expected to be decommissioned after the Mine closes), the CS Project is planned to serve system requirements and other customers and thus affords no reasonable basis for a regulatory requirement for any customer contribution by Minto[12]. When there is no inherent obligation for a required customer contribution, as is the case regarding Minto's contribution to the CS Project, there can be no inherent unfairness in Minto not agreeing to share in construction cost risks related to this negotiated contribution.

- **The $7.2 million contribution is a major benefit for ratepayers in the PPA**: This contribution is a fundamental part of the overall PPA and serves to further enhance the material benefits of the PPA by contributing to the development of long term infrastructure for Yukon.

YEC also rejects YECL's assertion that there is "no evidence supporting the reasonableness of using $85,000 per kilometre, a 10% mark-up for permitting and design or even for using 12% for inflation and AFUDC."

As fully set out in Exhibit B-16 in the Resource Plan Hearing and YECL-YEC-1-20 in the current proceeding, the cost estimates per kilometre (2005$) used for a 35 kV transmission line were developed by YEC based on its own past experience with 25 kV lines and after consultation with third parties which included line designers and YEC's resource planning advisors. To develop the mid-point estimates (2005$), Yukon Energy reviewed potential escalation of the line-related capital costs due to tight labour market conditions in Western Canada and other factors (e.g., raw material cost increases), based on review of recent Yukon Energy cost experience and also based discussions in August with engineering consulting firms leading to securing expressions of interest to submit proposals on the upcoming RFP for engineering services for this project. Further, in the circumstances, YEC submits that a 10% mark-up for permitting and design is a reasonable allowance (reflecting YEC's overall planning budget estimates for the CS Project), and that provision for 12 % escalation from the 2005$ estimates for inflation/AFUDC for third quarter 2008 in-service is also a reasonable allowance for three years inflation plus AFUDC largely related to the brief 2007/2008 construction period.

3.2.2 UCG Argument

In addition to raising similar issues to those raised by YECL in this regard, UCG also sees section 5.7 of the PPA (requiring other Industrial Customers seeking to connect to the Project in future to pay a capital cost contribution) "as an acknowledgment that the Project is primarily for the purpose of connecting industrial customers" and states "it is unclear how the PPA provision… will be enforced."

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[12] See also Section 3 of this Reply Argument regarding why, based on ESRs as regard MUI, there is no basis for any required Minto contribution to the CS Project portion. In such circumstances it is likely that Minto would be expected to pay on similar terms as the Faro mine with regard to the WAF transmission costs for Whitehorse to Faro and would at most see the assignment during the Mine life of a share of the annual costs for depreciation and return on rate base. On the grounds of fairness, this share for Minto also would likely be based on the share of the facilities reasonably required by Minto, i.e., the 35 kV requirement for Minto and not the 138 kV line built by YEC.

Yukon Energy Reply

UCG's suggestion that the CS Project is primarily for the purpose of connecting industrial customers ignores the stated ultimate prime purpose for the 138 kV design (to connect the two grids) plus the near term grid access benefits for local region First Nations as per YEC's MOU with the NTFN. Further, the section 5.7 provision demonstrates YEC's commitment to seek equivalent contributions from any future industrial customer connection (so that such future customers also contribute to the overall CS Project infrastructure development); YEC is looking for full support of the YUB and YTG to ensure that this PPA provision will be enforced.

3.2.3 PWP Argument

PWP reviews concerns about the reasonableness of the $7.2 million Minto Capital Cost Contribution for the CS Project and the methods to date of estimating capital costs, and submits that more detailed cost estimates are essential before the YUB is able to fairly assess reasonableness. PWP recommends as follows:

- YUB should reserve making a final decision on the appropriateness of the $7.2 million until the YUB has received and reviewed/assessed the more detailed cost estimates it expects YEC to submit for the upcoming Part 3 hearing; and
- If the YUB cannot reserve its decision as proposed above, the YUB should require that the PPA be amended such that this contribution is determined as a fixed percentage of the final cost to construct the main line (percent based upon either the ratios of preliminary cost estimates or, better and more fair in PWP's view, the ratio of actual final $/km incurred to construct the Minto 34.5 kV spur and the actual final $/km to construct the 138 kV CS line).

Yukon Energy Reply

Yukon Energy notes that PWP's first proposal would not tie the CS Project contribution to actual costs, as proposed by YECL and UCG, but would only require that the amount be based on more detailed cost estimates. However, such estimates are not currently available and will not be available until well beyond the time that the PPA needs to be approved. YEC submits that the Board should not reserve its decision as proposed by PWP as this would in effect mean that the PPA would not be approved by April 30th.

YEC's reply regarding the YECL argument on the fixed CS Project $7.2 million Minto contribution (section 3.2.1 above) addresses fully why there is no reasonable basis in the circumstances for requiring adjusting this amount to reflect actual costs as per PWP's second proposal, as well as the reasonable basis for the current cost estimates underlying the $7.2 million quantum. The options proposed by PWP in this regard reflect options reviewed by YEC as well as YECL, and do not in any way modify YEC's reply on this matter.

3.3 YEC'S FINANCING OF CAPITAL COST CONTRIBUTIONS (CS AND MS PROJECT CONTRIBUTIONS)

YECL and PWP each argued on this topic. In responding to YECL below, YEC addresses concurrently any of the material PWP arguments.

3.3.1 YECL Argument

YECL says that is has "significant concerns with respect to YEC's proposed methodology to finance the required capital contribution" stating that it will "shift risk to YEC's other customers". In addition to proposing a "preferred approach …to develop a defined maximum utility investment (MUI) policy" (see YEC reply to MUI issues, section 3.2 above), YECL notes the following in its argument:

- In response to YUB-YEC-1-34 stating that, "YEC was informed that without financing by YEC the Mine would not interconnect with the grid", YECL states that "the validity of this position is questionable." YECL argues that, in its opinion, "there is, in fact, no special circumstance that warrants this treatment [YEC financing and carrying any risk]…all of the indicators confirm that this treatment is not warranted."
- YECL suggests that YEC should require "Minto to seek other avenues [for such financing] such as the Yukon Territorial Government Energy Infrastructure Loan Program", noting (based on YECL-YEC-1-4) that "YEC financing is less stringent than a YTG program that is specifically set up to finance customer contributions for grid extensions." YECL states that "the approach adopted by YEC is inappropriate in the circumstances."
- YECL expresses concern that the Duck Pond Mine example cited by YEC as a precedent for such financing of a customer contribution "can hardly be characterized as normal utility practice", and that "the terms of this single example cited appear to be very different from those proposed by YEC". (It subsequently appears (page 9) that YECL is referencing the fact that the Duck Pond example requires blended principal and interest payments to begin immediately upon commencement of service, whereas during the first four years of service Minto will pay only interest for the $7.2 million CS Project contribution.)

YECL ultimately recommends that the Board "should reject YEC's proposal to finance over $11 million of Minto's customer contribution costs", regardless as to the risk being of an "extreme worst case scenario." YECL sets out two options for the Board in this regard:

a. Outright rejection of this component of the PPA; or
b. An "Order that states that the shareholder, as opposed to ratepayers, would be responsible for any amounts, including interest, not collected from Minto."

YECL concludes this matter by stating that if the Board finds YEC's proposal acceptable in the "special circumstances in this case", then YECL says that payments made should immediately include principal as well as interest (as opposed to the principal being deferred for a number of years).

Yukon Energy Reply

In reply, Yukon Energy submits that the financing provisions in the PPA for the Minto Capital Cost Contribution should be approved by the Board, and not be rejected as argued by YECL. In the circumstances, they are necessary as well as fair and reasonable. The following points are noted in this regard:

- the material difference (and benefit to ratepayers) associated with YEC financing of Minto customer contributions rather than YEC undertaking maximum utility investments as provided for in the ESRs (see section 3.1 of this Reply),

- the Duck Pond Mine regulatory precedent where the Newfoundland regulator approved the utility financing a mine customer contribution,
- the Mine Spur contribution financing follows and surpasses the Duck Pond Mine example's provisions, while the CS Project contribution financing reflects negotiated terms to facilitate securing this special and highly beneficial contribution to system costs,
- the PPA provisions which address PPA-specific risks, the overall magnitude of expected ratepayer benefits from the PPA, and the due diligence carried out by YEC to confirm that the Mine has sufficient ore reserves and other capability needed to support Minto's obligations under the PPA (see Yukon Energy Final Argument, section 4.1.1), and
- the fact that the overall PPA provisions (including the Mine Net Revenue Account provisions and the Take or Pay and YEC Security provisions) fully and fairly assign to ratepayers all of the substantial benefits as well as any related risks associated with these financing provisions.

Yukon Energy further responds that the PPA provisions to finance the Minto Capital Cost Contributions do not serve, in the overall context of the available options, to "shift risk" from Minto to other customers (see Section 3.1 and 3.2 of this Reply).

YEC also submits that YECL's proposal to ensure, in the event this financing approach is approved by the YUB, that YEC's shareholder should bear the risk and not ratepayers is without merit or principle. This overall project is being undertaken to secure material benefits for ratepayers (and there is no suggestion that any portion of the benefits from selling surplus hydro should be transferred to Yukon Energy's shareholder) and accordingly there is no principled argument that the noted risks should not follow the benefits.

There will be substantial benefits arising due to the sale of surplus Grid Electricity to the Mine at the Firm Mine Rate and due to the $7.2 million contribution towards building long term transmission infrastructure, and it is appropriate that the primary beneficiaries of these benefits (YEC and Yukon ratepayers) bear some of the risk. YEC notes, however, that ratepayers would also be exposed to risks under the MUI approach advocated by YECL, i.e., the maximum utility investment supported by the ESRs would rely on "expected" mine life and mine power requirements without any of the PPA provisions regarding the YEC Security, contract minimum take-or-pay amounts, purchase of the Diesel Units on similar favourable financing terms, as well as the Mine Net Revenue Account.

With regard to the Duck Pond example, YECL notes that the terms of this example appear "very different from those proposed by YEC". In reply, Yukon Energy notes that where the example is relevant (the Mine Spur contribution) such differences are all to the benefit of other Yukon ratepayers.[13]

YEC significantly adjusted the Duck Pond model by providing for further protections and mitigation measures in the PPA for the benefit of YEC and Yukon ratepayers. These measures include the provision of a $24 million take or pay obligation and provision for special security. In this sense, YEC's terms and

[13] The CS Project is not being built solely for Minto's benefit, and therefore the $7.2 million negotiated capital cost contribution paid towards the CS Project is not based on the Duck Pond Mine example.

conditions regarding the Mine Spur capital cost payments are very different from the Duck Pond example and enhance YEC's position. [14]

4.0 MINE DEFERRAL ACCOUNT

All three intervenors comment on the Mine Net Revenue Account, and these comments are addressed separately below for each intervenor. Overall, two intervenors (UCG and PWP) argue for immediate rate reductions rather than rate stability.

4.1 YECL ARGUMENT

YECL asserts (on page 12 of its Argument, based on YUB-YEC-1-6) that rate stability is being promoted to the detriment of intergenerational equity and sets out that "in YECL's view, ensuring that intergenerational equity is respected is more important than attempting to achieve rate stability."

In the alternative, if the Board concludes that rate stability is more important than intergenerational equity and approve the deferral account, YECL then argues that the determination of incremental costs included in the account needs to be adjusted to take into consideration the following factors:

- Need (in YECL's view) for new generation earlier due to Mine when consider capacity planning and LOLE.
- The need to advance generation is even greater, at the onset of grid service, if the Mine load is included in the N-1 criteria (as YECL suggests should be done).
- Include all of the operations and maintenance costs associated with the Mine Spur and facilities from Carmacks to Pelly Crossing.

Yukon Energy Reply

In reply, Yukon Energy submits that the Mine Net Revenue Account is a key element within the negotiated PPA package that includes material customer contributions based, in part, on the PPA provisions to promote and protect rate stability. YEC submits that the Board should approve this deferral account based on the evidence as to its effectiveness and importance within the PPA package in protecting ratepayer interests, as well as the following considerations:

1. YEC confirms YECL's premise that one of the prime purposes of this deferral account is to promote rate stability, reflecting both the Mine's inherent potential effects and the interest of the Parties to prevent rate instabilities experienced in the past from the Faro mine loads on the grid.
2. YEC disputes assertions that rate stability over the expected period of service to the Mine (about 8 years at present) is being achieved at any great sacrifice to intergenerational equity.

[14] However, as with the Duck Pond Mine example, Minto will commence paying blended principal and interest at commencement of delivery of Grid Electricity.

3. In response to YECL's alternative proposal to adjust the determination of incremental costs, YEC responds that the PPA already provides a broad definition able to accommodate all reasonable incremental costs and not only those assumed and included in the Attachment C example in the PPA Application. [15] Further, as already reviewed in section 2 of this Reply, YEC disagrees that any added generation costs will be caused by the Mine load affecting capacity planning requirements.
4. Under the PPA, the Board's ultimate jurisdiction and mandate to control this deferral account is fully recognized, and the account ensures that all Net Mine Revenue benefits are retained for the benefit of ratepayers under the direction of the Board.

In further reply, YEC reiterates the points made in relation to the operation of the Mine Net Revenue Account in section 4.1.2 of YEC's Final Argument at pp. 24 to 27.

4.2 UCG ARGUMENT

In its final argument UCG submits that the proposed deferral account is very close to the Income Stabilization Trust account proposed in YEC's 2005 Revenue Requirement Application, and that "it does not make sense to approve this deferral account".

UCG asserts that income from serving the Mine should be flowed directly into rate reductions during the initial years of Mine operation to "offset mine-related costs in the early years of operation when the commodity prices are most likely to be high." UCG disagrees with YEC's suggestion that there is any benefit to retaining the initial income from Minto's operations in this deferral account "instead of flowing that income directly into rate reductions during the initial years of Mine operation."

Yukon Energy Reply

In reply, Yukon Energy fails to see any relation or similarity between the income stabilization trust and the proposed Mine Net Revenue Account. Further, YEC cannot agree with the suggestion as set out in paragraphs 53 and 54 of UCG's argument that immediate rate reductions are preferable to the deferral accounts rate stability benefits for all ratepayers.

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[15] Under the PPA "Incremental YEC Costs" are broadly defined to include all reasonable expenses "due to the supply of Grid Electricity to Minto by YEC." The basic definition, as reviewed below, provides for incremental O&M expenses for the Transmission Project facilities to supply Grid Electricity to the Mine:

> "Incremental YEC Costs" means, in any YEC fiscal year, incremental YEC expenses and return on rate base in that fiscal year, if any, as reasonably estimated by YEC, on a consistent basis from year to year, due to the supply of Grid Electricity to Minto by YEC, including without limitation:
>
> > (aaa)(iii) any depreciation, operating, and maintenance expenses, and return on rate base in that fiscal year related to the Transmission Project, the CS Project facilities or the Diesel Units during the time period, if any , that the Diesel Units are owned by YEC

Attachment B and Attachment C of the PPA Application do not delineate operation and maintenance costs for these facilities due to the fact that they are not considered to be material relative to the other costs described during the initial decade of new facility operations.

YEC submits that UCG's argument on this one matter ignores the relevant evidence on ratepayer rate stability risks as set out in the Application and the IRs (see YEC Final Argument, section 4.1.1), as well as the ways in which this deferral account is designed to mitigate and manage these ratepayer risks (see YEC Final Argument, section 4.1.2). In particular, the risks cited by UCG regarding Mine commodity prices provides, in YEC's view, added rationale for the Board to approve this deferral account[16].

YEC further notes that under the PPA the Board's ultimate jurisdiction and mandate to control this deferral account is fully recognized, and the account ensures that all Net Mine Revenue benefits are retained for the benefit of ratepayers under the direction of the Board.

4.3 PWP ARGUMENT

The PWP Final Argument asks the Board to deny establishment of this deferral account and require removal of any mention of this account from the PPA.

PWP's argument includes the following assertions:

- YEC has not demonstrated the need to establish this account; it can be expected to cause intergenerational inequities.
- It appears that this account will be used only to create a fund "that will be used at some future date for further utility investment in infrastructure".
- Revenues from Minto should not be diverted into a holding account; these revenues could be used immediately to reduce rates for all customer classes.
- Prejudicial to interests of all other ratepayers to permit, as is provided in the PPA, Minto to have a defined say in how this fund will be used in the future

Yukon Energy Reply

In reply, Yukon Energy submits that the PWP argument fails to consider the evidence in this proceeding regarding this deferral account, including such evidence on the rate stability objectives (and related ratepayer risks) leading to the need for this deferral account to be included in the PPA, and that the Board should not accept PWP's submissions on this matter.

YEC submits that there is no basis for saying that this account will be used only to create a fund for further utility investment in infrastructure.

YEC also submits that there is no basis for saying that the PPA provisions allowing Minto to make submissions to the Board are in any way prejudicial to the interests of all other ratepayers. With or without the PPA, Minto would have such rights in any event.

[16] UCG's specific comments in this regard are unclear, however, in that setting aside Mine revenues into the account in the early years is done to ensure that these funds are available to keep offsetting mine-related costs in the later years when such costs (as shown in Attachment C) are likely to be higher and when commodity prices may also be lower.

5.0 MATERIAL ADVERSE IMPACT TO MINTO SAVINGS/ MINIMUM TAKE-OR-PAY PROVISIONS

Two intervenor arguments (YECL and UCG) specifically addressed section 3.5 of the PPA (which potentially affects the minimum take-or-pay obligations of Minto) and one intervenor (PWP) addressed in general the minimum take-or-pay provisions.

5.1 MATERIAL ADVERSE IMPACT TO MINTO SAVINGS/SECTION 3.5 OF PPA

5.1.1 YECL and UCG Arguments

Referencing YUB-YEC-1-16 and the loss of security in the event of a material change to Minto's cost savings under the circumstances provided therein, YECL has suggested that section 3.5 of the PPA leads only to negative "one sided" implications for future decisions of the Board and asserts that in light of this the Board should "discount the value and or importance of this security in its deliberations". YECL suggests in the alternative that the Board "order that YEC and Minto develop a more balanced approach to the factors affecting 'Minto savings'".

In paragraphs 62 to 64 of its Final Argument UCG has raised similar concerns , setting out that "there is no justification for extinguishing the Take or Pay Amount Security in the event the Firm Mine [R]ate changes to the detriment of Minto", and, "that the savings may be less then [sic] projected do[es] not mitigate the need for security related to the Take or Pay Amount by YEC in order to make the Project feasible"
These concerns are addressed together in the response below.

Yukon Energy Reply

In reply, Yukon Energy submits that the YECL and UCG arguments seek to reopen a matter of material interest to Minto without understanding the limited and constrained nature of section 3.5, the nature of Minto's basic concern on this matter, and the very limited likelihood of section 3.5 ever being of relevance to the Board or other ratepayers.

YEC submits that the PPA provisions regarding section 3.5 are reasonable and required for the PPA, and do not fetter the Board's jurisdiction or mandate.

The YEC Security may be removed as provided for in section 3.5 and the take-or-pay obligation offset only in the following carefully circumscribed circumstances:

- Where the YUB in exercising its statutory jurisdiction <u>materially</u> alters the terms and conditions of the PPA; or
- Where a YUB decision <u>increases</u> the Firm Mine Rate after 2008 and such decision is made on the basis of cost of service principles and methods which are inconsistent with the cost if service principles and methods in Schedule E of the PPA (which simply reflect OIC 1995/90 and past ratemaking practice and principles of the Board as these affect the Firm Mine Rate);

- And either action on the part of the YUB materially adversely affects the cost savings to Minto under the PPA arising due to the conversion from diesel generation at the Mine Site to Grid Electricity

The following is noted with regard to the limited impact that this section may ultimately have on ratepayers if such unlikely event were to occur:

- The impact on other ratepayers in such an event is a loss of security for the Minimum Take-or-Pay Amount and an offset of Minto's obligations related solely to that Minimum Take-or-Pay Amount; the YEC Security is not extinguished as regards the other Minto obligations covered (e.g., Capital Cost Contribution, Decommissioning Cost Payment, and payment of bills).
- Nothing in section 3.5 diminishes the Mine's obligation to pay the Firm Mine Rate and meet its other ongoing obligations under the PPA.

5.2 MINIMUM TAKE-OR-PAY PROVISIONS

5.2.1 PWP Argument

Part 6 of PWP's Final Argument says that the take-or-pay obligations appear to be primarily intended to reduce risk to YEC by ensuring that Minto is bound to pay off its obligations with respect to customer contributions for the main line, and with respect to decommissioning. PWP defers to the advice of YUB's consultants on this issue and concludes that without upfront contributions from Minto the take-or-pay provisions "may be the only other option available."

The PWP argument also sets out the following issues and/or comments on the take-or-pay provisions:

- If Minto can't take it, this means that the Mine is not producing copper and will have no income to pay.
- If Minto can't take but can pay and another customer requests and pays for Minto's untaken surplus power, YEC will be obligated to reimburse Minto.
- If YUB requires YEC to obtain full upfront contributions for these obligations a take-or-pay contract would be unnecessary.

Yukon Energy Reply

In reply, Yukon Energy agrees that the minimum take-or-pay obligation was a key element of the PPA secured by YEC when it became evident that Minto would not be able to provide up front payments for the Capital Cost Contributions.

YEC also notes that some of the concerns raised in PWP's Final Argument, as submitted, seem to reveal a misunderstanding as to how the take-or-pay provisions set out under section 6.2, 6.3 and 6.4 of the PPA will operate. The following points are noted to clarify any misunderstanding:

- Section 6.2 of the PPA requires Minto to purchase $24 million worth of electricity within the first eight years after Commencement of Delivery.

- This minimum amount is payable regardless of the amount of Grid Electricity actually delivered by YEC.
- The Mine is only alleviated of its take-or-pay obligation under Force Majeure in circumstances where "acts or omissions of Governmental Authorities" directly result in a material closure of the mine under section 12.3 of the PPA.
- The YEC Security is not discharged in this regard until the Minimum Take-or-Pay Amount is paid off (and other specified payment obligations are also fully met), or unless the provisions of section 3.5 act to remove such security with regard to the Minimum Take-or-Pay Amount.

Finally, contrary to PWP's argument, there is no provision in the PPA that provides that any "surplus untaken power" is essentially purchased by Minto such that YEC would have to reimburse Minto for the sale of such "untaken power," nor any provision allowing Minto to sell such "untaken power" to any other party.

6.0 FIRM MINE RATE/COST OF SERVICE

6.1 COST OF SERVICE AND FIRM MINE RATE

All three intervenors commented on the COS conducted by YEC. Notably, YECL did not take an adverse position to the COS analysis conducted and utilized by YEC to determine the Firm Mine Rate for 2008, and stated that YECL "is not prepared to express any views on the appropriateness of the cost of service principles in the PPA", or on the analysis in Attachment A to the Application, other than to note such principles in the PPA "are directed primarily towards an industrial customer."

UCG and PWP each questioned whether the proposed rate for 2008 complied with the COS principles set out in OIC 1995/90 and whether such rate was adequate to cover (or in the case of PWP equal) the costs of the service provided.

6.1.1 UCG Argument

UCG has made the following assertions with regard to the COS and the Firm Mine Rate for 2008:

- YEC has failed to comply with OIC 1995/90 and that in the current proceeding, YEC has not provided the required comprehensive cost of service study for the Yukon rate zone;
- "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 truly covers the fully-loaded cost of the service provided."
- There is no evidence on record in this proceeding that the rates proposed to be charged to Minto in 2008 reflect the actual, fully loaded costs of serving the industrial class of customer in 2008.
- UCG submits that any rates approved at this stage for implementation in 2008 or later must be deemed interim.

UCG also quotes evidence from the YEC 2005 Revenue Requirement hearing and the Resource Plan hearing as to expectations at that time as to when and how Rate Schedule 39 would be adjusted to deal with new mine customers.

Yukon Energy Reply

In reply, Yukon Energy disagrees with the above assertions made by UCG as to there being "no evidence" on COS and related matters, and submits that YEC has provided extensive evidence in the PPA Application and in IR responses setting out the COS analysis undertaken for 2008, which the evidence demonstrates was based on the integrated costs of YEC and YECL. There is also clear evidence that the Firm Mine Rate for 2008 is more than sufficient in the circumstances to at least cover any reasonable estimated COS for 2008.[17]

Attachment A to the PPA Application sets out the COS methodology used to determine the Firm Mine Rate for 2008, and this analysis includes the following:

- A discussion of the key OIC 1995/90 directives followed to determine the Firm Mine Rate
- Section 5 of the Appendix A to the PPA Application provides a detailed review of the principles, methods, information and assumptions adopted to develop the 2008 COS estimates including the following:
  - Forecast loads (industrial and other), setting out the key energy and peak demand forecast estimate adopted for the 2008 COS
  - Forecast Consolidated Rate Revenue Requirement, setting out the approach adopted to estimate the consolidated 2008 rate revenue requirement for YEC and YECL based on review of changes since the last COS (1997) as well as the latest information filed with the YUB and YEC by YECL
  - Forecast Costs by Function, reviewing the approach adopted to estimate 2008 forecast consolidated rate revenue costs by Generation, Transmission and Distribution functions as required for COS
  - Sensitivity examples
  - Industrial class revenue to cost ratios

The rationale for, and sufficiency of, the analysis are also discussed in various IR responses.[18]

As noted previously, section 6(1) of OIC 1995/90 directs 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 that customer class; those costs must be determined by treating the whole Yukon as a single rate zone and the rates charged by both utility must be the same."

[17] See also section 3.1.1 of YEC's Final Argument, pages 5 to7 in particular, which show how changes to the Firm Mine Rate for 2008 as suggested in IRs relating to COS matters typically would only cause the COS for the Major Industrial Customer class in 2008 to go down, i.e., the evidence regarding potential COS changes confirms that the 2008 rate that Minto has agreed to pay is more than sufficient to meet the requirements of OIC 1995/90.

[18] See discussion in YUB-YEC-1,10,16,18,20,21,23,24,25,26 and 31; UCG-YEC-1-2,11,15,17,21,23,25,26 and 27; UCG-YEC-2-6, 7,8,9,25,30 and 40 and YECl-YEC-1-1,2 and 16

Thus, the key test for YUB approval of the Firm Mine Rate for 2008 is consideration of whether the rate is sufficient to cover the COS for that year and there is no requirement that the rate for 2008 should equal COS. No evidence has been adduced to suggest that this rate is insufficient to cover the COS in 2008 for the Minto Mine.

6.1.2 PWP Argument

PWP argues with regard to the COS, that it is difficult "to assess or determine whether the proposed firm mine rate…would fairly recover its allocated share of a true up to date COS," and essentially argues that the COS as provided "are simply too out dated to be considered reliable as to the bases for today's realities." It is further asserted by PWP that the $10 million of YTG funding further compromises the current COS estimates, "as such a contribution will lower the amount to be included in the rate base and thus the share each customer class will bear."

PWP in effect argues that the YUB should approve the Firm Mine Rate with modifications (see section 6.2 of this Reply), and that such YUB approval should only be on a temporary/interim refundable basis until such time as a full COS and new rates are approved by the YUB at the next GRA.

Yukon Energy Reply

In reply, Yukon Energy notes that PWP's comments and assertions with regard to the COS and the adequacy of the Firm Mine Rate completely ignore the evidence provided in the PPA Application and during the IR process which clearly sets out that the rate for 2008 is sufficient to <u>at least</u> recover the full cost of service to Minto for 2008 (see the above comments regarding the similar assertions made by UCG).

With regard to the $10 million of YTG funding, Yukon energy agrees with PWP that such funds will only serve to lower the COS for 2008 and will therefore further ensure that the Firm Mine Rate for 2008 will, as submitted in YEC's PPA Application, be more than sufficient to, at least, recover the COS for 2008.

As set out in YUB-YEC-1-1, the PPA requires that the Firm Mine Rate for 2008 as set out in Rate Schedule 39 be approved (i.e., approval on an interim or temporary basis is not consistent with the PPA conditions), but places no restriction or constraints on the Board with regard to adjusting Rate Schedule 39 beyond 2008.

6.2 RATE MODIFICATIONS APPLICABLE TO RATE SCHEDULE 39

Intervenor arguments addressed the following rate modifications to the existing Rate Schedule 39:

- Rider F (addressed by YECL and PWP)
- Billing Demand Ratchet/Seasonality (addressed by PWP)
- Billing Demand charge (addressed by PWP)

6.2.1 Rider F

YECL and PWP both provide comments with regard to Rider F in their respective Final Arguments.

YECL notes that OIC 1995/90 requires that Rider F be included and calculated in an appropriate way to account for zero cost today as compared to the current Rider F amount of 0.9638 cents/kWh for all other applicable rate schedules.

PWP also notes that the YUB should consider re-imposing Rider F on Rate Schedule 39 stating that, "as electrical rates are equalized across the Yukon and all other customer classes are subject to this rider, in fairness, so should Minto."

Yukon Energy Reply

In reply, Yukon Energy submits that the Firm Mine Rate for 2008, as set out in Rate Schedule 39, meets all OIC and other requirements, reflects current forecast costs for diesel fuel, and should be approved by the YUB at this time, particularly given that the Mine Net Revenue Account provisions will ensure that other ratepayers are not affected by ongoing changes in diesel fuel costs as these may reasonably be assigned to the Mine's power purchases.

The YUB is only being asked to approve a Firm Mine Rate for 2008, and this rate may be amended at any time thereafter to include provision for Rider F at such time after the Board has concluded a comprehensive COS and rate review after the next GRA. Today, however, any amendment of the rate for 2008 to include Rider F would require an amendment to the Rate Schedule 39 set out in the PPA.

YEC agrees with YECL that any Rider F that might be considered for this rate in 2008 would need to be calculated in an appropriate way to account for zero cost today as compared to the current Rider F amount of 0.9638 cents/kWh for all other applicable rate schedules, i.e., this was one of the practical complexities that led the Parties not to include Rider F in the PPA rate schedule for 2008. YEC re-iterates that the PPA shows full recognition of current diesel fuel price forecasts, and is consistent with inclusion of Rider F as may be decided by the Board for rates after 2008.

As noted in YECL-YEC-1-16(d):

> YEC has determined a rate for Minto that collects the full cost of service for the system including diesel fuel at today's forecast prices. Rider F is an account that solely adjusts for changes in diesel fuel since the respective classes' firm rate was last established, which for all other classes serviced by YECL is the late 1990's when diesel prices were much lower.
>
> Also, unlike the Rate Schedule 39 in place when the Faro mine was on the system, there is no material diesel on WAF today, and the diesel for isolated systems continues to decline with the conversion of Dawson and Stewart Crossing and planned conversion of Pelly Crossing to hydro systems. To the extend that diesel fuel is required on WAF after the Minto mine is connected,

substantial components of this diesel would be assigned to the Mine Net Revenue Account in any event (charged at full diesel prices then in effect), so there is no basis for a Rider F adjustment.

6.2.2 Billing Demand Ratchet / Seasonality

The PWP Final Argument says that peak demand created by Minto start up of large induction motors (even with provision for speed controls), and increases in sustained demand loads during heavy crushing operations "will likely have negative power quality impacts on the system as a whole" and have a particular effect on the communities of Pelly Crossing, Ross River and Carmacks.

PWP notes that "in the summer non-ratcheting of demand makes sense for the commercial classes of energy load draws such as these will have negligible effect on power quality because the majority of these smaller demand loads are located near the generating facilities, i.e., in Whitehorse" and asserts that as Minto will have larger demand loads at the remote end of the transmission system, it should be subject to demand ratcheting during the summer months similar to the mining operations at Faro.

PWP argues that the Billing Demand definition in Rate Schedule 39 in the PPA should be adjusted by the Board as regards item (b) to read as per the 1997 Rate Schedule 39 so as to remove the exclusion of the months April through September "so as to induce Minto to take all reasonable steps to keep and buffer its demand at reasonable levels throughout the year in an effort to reduce adverse power quality impacts to other customers."

Yukon Energy Reply

In reply, Yukon Energy submits that PWP has provided no reasonable basis consistent with normal rate making principles, COS or past Yukon practice to change the Billing Demand definition in Rate Schedule 39 for 2008 as included in the PPA, and the Board should therefore not change this rate.

Overall, YEC submits that the Billing Demand ratchet exists to ensure that the maximum billing demand recorded for a customer during the period applicable for the system peak (i.e., the non-summer months) is used to set Demand charges throughout the year. Accordingly, based on COS principles currently in place in Yukon regarding demand cost allocation, it is not appropriate or consistent to include summer months in this ratchet determination. In 1998 YEC had reviewed and recognized this principle even as regards the Faro mine, which also used large motors and was located at the end of the transmission grid.[19]

YEC notes in this regard that Minto is a relatively small mine when compared to the Faro mine and its impacts on the system will not be comparable to the impacts of the Faro mine.

[19] YEC agrees with PWP that the last approved Rate Schedule 39 was the rate for 1997 as quoted in the PWP Argument. YEC has been using incorrectly on its web site and internal reviews a version of this rate with the Billing Demand as worded in the PPA, i.e., based on YEC's last review of this rate in 1997/1998, it had understood that this update had already been made to this rate.

With regard to the power quality issues noted by PWP, YEC submits that the PPA includes more than adequate provisions under section 4.6, 4.7 and 4.8 (see below) to ensure that Minto will not have an adverse impact on other customers, and that these provisions (rather than a Billing Demand approach as argued by PWP) are the appropriate and principled way to address such power quality concerns.

Pursuant to section 4.6 of the PPA the following protections to YEC's operating system are provided:

- Minto is required to regulate its electrical load so that the Power Factor at the mine is maintained within a reasonable operating range agreed to from time to time between the Parties.
- Minto will also operate its equipment and use Grid Electricity at the Mine Site so as not to endanger YEC's plant or equipment or cause any unacceptable fluctuations of YEC's electrical system.
- Minto will comply with reasonable standards of operation as provided by YEC to Minto by written notice from time to time
- If Minto fails to comply with requirements or standards of operation so as to endanger YEC's plant or equipment or cause unacceptable fluctuations on YEC's electrical system, YEC may, by written notice, require Minto to remedy the situation. Should Minto fail to immediately comply upon receiving such written notice, YEC may immediately suspend the supply of Grid Electricity to Minto and continue such suspension until the default is remedied.

Section 4.7 of the PPA provides that the ESRs apply to both YEC and to Minto, and sets out the responsibilities and liabilities of each Party with regard to Electricity delivered by YEC to Minto pursuant to the PPA.

Section 4.8 establishes that if Minto considers its equipment at the Mine to be at risk of damage from the supply of Grid Electricity by YEC pursuant to the PPA, and YEC is unable to use the Diesel Units to supply Electricity to the WAF grid than Minto may require the units be used to supply the Mine with the sole cost to Minto being costs for fuel and operator assistance.

Given the above-noted provisions regarding power quality issues, it is not necessary or appropriate to include provisions to mitigate Minto's impact on the YEC grid and other customers in the billing demand provisions set out Rate Schedule 39. The PPA provides that standards of operation will be determined by YEC and supplied to Minto, and that Minto is obligated to meet those standards or will be subject to an immediate suspension of supply. This provides YEC with sufficient controls to ensure that Minto's operations do not have an adverse impact on YEC's system.

6.2.3 Billing Demand Charge

The PWP Final Argument recommends that in order to encourage load demand controls the YUB should consider raising the Demand Charge rate in the proposed new Rate Schedule 39 from $15.00/kV.A to $16.00/kV.A on a temporary/ interim refundable basis until a full COS and new rates are approved by the YUB at the next GRA.

Yukon Energy Reply

In reply, Yukon Energy submits that the Board should not change the Demand Charge for 2008 as proposed by PWP. In addition to the obvious concerns about any change to the 2008 rate and by extension to the PPA, YEC submits that there is no acceptable rationale for this rate proposal, noting that there is no COS basis to PWP's proposal to increase the billing Demand Charge for Rate Schedule 39, and that load control as regards power quality concerns is addressed though other elements of the PPA as reviewed under section 6.2.2 above of this reply. YEC asserts that the rate is not the proper venue to address the stated concern.

6.3 APPLICABILITY OF RATES TO YECL SERVICE TERRITORY

YECL and UCG both provide similar comments regarding the applicability of the Rates attached as schedules to the PPA to YECL's service territory.

YECL has noted that pursuant to OIC 1995/90, section 6(1) all rates charged to major industrial customers must apply to all customers in the Yukon and submits that the proposed rates apply to service provided by both utilities and not just YEC as suggested in YEC's response to YECL-YEC-1-16(d). UCG voices a similar concern at paragraph 42 of its Final Argument, noting that "current and potential customers of YECL should be provided with equal access to a service designed to be provided with a single Yukon rate zone."

Yukon Energy Reply

In response to YECL's concerns, YEC notes that this is a Yukon Energy application with regard to providing service to a firm industrial customer. YEC's Application fully recognizes that Rate Schedule 39 will apply throughout Yukon. The wording reflects YEC's understanding that any prospective customer for this rate, as currently understood by YEC, will be a customer of YEC. Accordingly, YEC sees no need for any change in this regard.

Since its inception, YEC has held a legislated franchise to serve such industrial customers. YEC is not aware that YECL currently holds a similar franchise, and is similarly not aware of any time during YEC's existence where YECL has served major industrial customers as defined in OIC 1995/90. Should YECL at some date be aware of any impending change in this regard, the industrial rate schedule may be brought before the Board for review and adjustment.

At this time, however, the Firm Mine Rate is expected to apply only to Minto and should YEC at some point in the future conclude a power purchase agreement with Carmacks Copper or any other new major industrial customer it is anticipated that the PPA will be brought before the YUB for review and the rate schedule may be adjusted at that time.

7.0 RATE SCHEDULE 35 (SECONDARY SALES)/MEASURED DEMAND/CONFIRMATION OF LOW GRADE ORE

All three intervenors raised issues regarding Rate Schedule 35, and these issues are addressed below separately for each intervenor.

7.1 YECL ARGUMENT

YECL has suggested in its Final Argument that YEC's responses to certain interrogatories have not provided any explanation for how secondary energy demand and the associated impact on primary demand will be measured, alleging that YEC has abdicated the responsibility for meeting this requirement under Rate Schedule 35 to the customer, instead of itself developing a proposal. YECL recommends that the approval of Rate Schedule 35 be deferred until such time as YEC proposes adequate and appropriate measurement and audit procedures for measuring demand pursuant to Rate Schedule 35.

Yukon Energy Reply

In reply, YEC agrees that it has not developed an auditing methodology and that no procedure is currently in place to measure secondary energy demand; however, YEC rejects the assertion that this is somehow inconsistent with normal utility practice and that it is abdicating its responsibilities in this matter to the customer.

YEC submits that it is entirely appropriate for the customer seeking the benefits afforded by the rate to come forward with a proposal for how to audit and measure the type of secondary energy afforded at the special rate. It is noted that the rate schedule provides protections and provisions to ensure that unless a reasonably acceptable reporting method is provided to YEC the customer will be charged for electricity at the Firm Mine Rate.

YEC sees no reason for the Board to defer approval of Rate Schedule 35, but is willing to report to the Board with any proposed auditing methodology developed between YEC and Minto in order to ensure that it is reasonable and that fulfils the requirements of Rate Schedule 35. It is noted that not approving Rate Schedule 35 as it is currently set out at this time would require that both Parties to the PPA agree to an amendment.

7.2 UCG ARGUMENT

In paragraphs 45-48 of its Final Argument, UCG makes the following assertions:

- A COS should be used to determine secondary energy rates so that firm and secondary customers may be assured that one customer class is not subsidizing the other class
- Secondary energy customers should not be treated differently from firm sales customers
- Forecast revenues from secondary energy sales must be included as part of a comprehensive cost of service study

- Any determination regarding the secondary energy rate should be deferred until the GRA later this year

Yukon Energy Reply

In response, Yukon Energy submits that no valid reason has been provided to defer approval of rate Schedule 35.

YEC notes that UCG fails to recognize that firm customers and secondary customers are fundamentally different. A COS is not required to determine secondary rates as these rates are established by the Board, and made available by the utilities, based on available surplus hydro as well as transmission capacity. Unlike customers serviced under a firm rate, service to secondary sales customers may be interrupted on notice not exceeding 24 hours in the event that conditions so require as surplus hydro energy is not, or will not be, available as previously forecast. Such sales are opportunistic in nature and not included in cost of service studies in normal regulatory and rate setting practice.

With regard to providing forecast revenues from secondary energy sales YEC notes the following:

- Such forecast information for Minto is not yet available at this date.
- The COS in Attachment A to the PPA Application fully considers forecast secondary sales revenues per Rate Schedule 32.

7.3 PWP ARGUMENT

PWP makes the following assertions in with regard to the Low Grade Ore Processing Energy Rate:

- So long as surplus hydro is available on the WAF grid, such surplus secondary power should be available to industrial customers on a seasonal, fully interruptible metered basis
- Surplus hydro and the secondary energy rate should be allocated on a “first come first serve” basis and not based on the grade of copper being processed at a mine site
- Rate Schedule 35 should be withdrawn and re-submitted in a simplified form such that any large industrial electrical customers have equal opportunity to purchase seasonally available surplus secondary energy at this rate on a “non-discriminatory and non-favoured” basis.
- The energy charge of 6 cents/kWh “appears reasonable”, but should only be approved by the YUB on a temporary or interim refundable basis until the next full COS or GRA

Yukon Energy Reply

In response to PWP’s assertions, it is noted that YEC currently serves no other industrial customers in Yukon using Grid Electricity. At such time as any other major industrial customers emerge for grid service, YEC has noted that all rates (including this new secondary rate) will likely be open once again for review. YEC has also noted that surplus hydro supplies are unlikely to be available for any secondary sales if another major industrial customer connects to the WAF grid. Accordingly, YEC sees no immediate requirement to amend Rate Schedule 35 as currently submitted, and since it is surplus and interruptible secondary power being sold at a contract rate there is no requirement for a full COS to determine whether the 6 cents/kWh is reasonable. It is therefore also not necessary or appropriate to approve the rate on a temporary or refundable basis until a full COS or GRA.

Nothing in the PPA would prevent YEC from bringing an amended Rate Schedule 35 before the YUB for review at a future date when YEC serves other industrial loads and such industrial customers demonstrate an interest in purchasing any seasonally available surplus hydro electricity.

Further, in response to YUB-YEC-1-11(1) YEC noted the following with regard to the wider applicability of this rate:

- This rate was designed in response to PPA negotiations with the Minto Mine, and in the absence of any other current potential mine customer discussions
- The terminology and definitions set out in Rate Schedule 35 will be reviewed by YEC in the event that any other mine emerges that might potentially meet such a criterion in circumstances where the rate might also be available due to surplus hydro still being available.
- It is unlikely that surplus hydro would continue to be available for any WAF customers in the event that another major industrial mine were to be serviced concurrently with the Minto Mine.
- Surplus hydro supplies are expected to gradually disappear on WAF between now and about 2020.

At this time, since there are no other industrial loads on the system being served by YEC, YEC has not considered it necessary to focus on further refinement of this rate schedule to determine which other types of industrial customers may be included or excluded under this rate.

8.0 PURCHASE OF ON-SITE DIESEL UNITS

All three intervenors provided comments on the Diesel Units and stated opinions regarding the relative value of the units to YEC and its ratepayers and whether YEC should purchase the units. Only one intervenor (PWP) submitted that the purchase of these units would be imprudent and consequently should be disallowed.

YECL did not recommend against the purchase of these units, but questioned whether there was sufficient evidence on record to support certain YEC assertions regarding the competitive price and value the units would provide to YEC and its ratepayers. UCG also did not recommend that the units not be purchased, but questioned whether the purchase was required given the recently announced YTG funding. UCG also asserted that the units should be made available throughout YEC's system and for off-grid customers.

8.1 YECL ARGUMENT

With regard to the Diesel Units YECL alleges "based on the information provided in YEC's application, it is impossible to confirm whether or not the proposed purchase of the onsite diesel units is reasonable and appropriate," and notes the following:

- No evidence is on record to support the YEC statement that the price is very competitive with Mirrlees costs estimated in the Resource Plan Hearing
- YEC has not provided evidence that supports the statement that line loss reductions will offset other generation costs or that this is a cost effective contingency option

Yukon Energy Reply

In reply, Yukon Energy submits that the PPA Application and IRs provide ample evidence to demonstrate that purchase of the Diesel Units is reasonable and appropriate, and this evidence also supports YEC's statements as referenced by YECL.

YECL has not recommended that these Diesel Units not be purchased pursuant to the terms and conditions of the PPA but has merely, and erroneously, asserted that there is no evidence to support YEC's position with regard to the above-noted issues. In response it is noted that YEC has provided evidence with regard to all of these points in the PPA Application and in interrogatory responses as follows:

- With regard to the reasonableness of the purchase price, the following is noted:
  - As noted in UCG-2-14, the negotiated purchase price for the units reflects a proxy for the estimated market value in the event that Minto had proceed to buy out the Cat Leases and then sell those units to other off-site users as had been planned after YEC commenced delivery of grid electricity to the mine.
  - YEC also carried out its own internal review of both the depreciated valued (based on hours of assumed operation and purchase price of new units) review of costs for other used diesel options (as reviewed in Resource Plan regarding Mirrlees Life Extension options); Minto also performed its own assessments of potential resale values to others.
  - It is noted in YUB-YEC-1-8 that during the update in the Resource Plan hearing Exhibit B-16 provided that the cost for rehabilitation of the Faro Mirrlees unit was expected to be in the range of the Whitehorse Mirrlees Life extension capacity noted in the Supplemental Materials at about $457 per kW.
  - YEC concluded that the negotiated price (i.e., an amount not exceeding $350 per kW) was reasonable in light of all of the options assessed.
- The PPA also provides under "Diesel Units Purchase Price" for deductions from the $2.24 million with regard to depreciation and maintenance expenses related to actual use in excess of certain stipulated hours of operation
- The PPA commits YEC to purchase the Diesel Units subject to the terms and conditions set out in section 10.2 of the PPA, which includes the condition that YEC have the opportunity to inspect the Diesel Units to be satisfied, acting reasonably, that the Diesel Units are in good operating condition and fit for their intended purpose at the time of purchase.

- It is noted in YESAB 2(5) and in YUB-YEC-1-8 and on page 11 of the PPA Application that when WAF diesel operation is required, YEC operation of at least two of the Diesel Units at the Mine Site (especially for baseload operation) is expected to be cost effective due to the minimization of line losses and related additional diesel generation requirements. For example, between two and three of the Diesel Units at the Mine Site would rank next to the top of the WAF diesel generation stacking order, reflecting their capacity to supply expected Mine load levels at efficient fuel operation levels.

8.2 UCG ARGUMENT

In its final argument at paragraphs 65-67 UCG posits the following:

- The diesel units should be made available for use anywhere in Yukon rather than restricted to the WAF grid
- These units should be available to off-grid industrial customers or other communities
- In light of recent YTG funding commitment, it is queried whether YEC should be purchasing the units at all

Yukon Energy Reply

In response it is noted that the units are mobile and may be moved or sold at any time after the terms and conditions set out in section 10.5 of the PPA are satisfied. There is no PPA requirement that these units be used only on WAF, i.e., the only requirements related to location are those pertaining to the Mine Site.

The purchase of the Diesel Units pursuant to the PPA bears no relation to the recently announced YTG funding commitments.

8.3 PWP ARGUMENT

PWP submits that the purchase of the Diesel Units may not be a “prudent investment” and submits that the YUB should “disallow the acquisition of these units by YEC” basing his position on the following assertions:

- These are used units–two of which may have had malfunctions
- PWP was informed that the diesel units may not be compatible with YEC’s other generating facilities
- Ownership of the units at the mine site will increase YEC’s risk as YEC will have reduced security and control over the units.
- If Minto were to retain ownership YEC could contract for supply of any required energy at lower present worth cost
- Refurbishing the units at Faro would be a more prudent and less risky investment.

Yukon Energy Reply

In reply, Yukon Energy sees no reasonable basis in PWP's argument for the Board to reject purchase of the Diesel Units as proposed by PWP, and notes that these units are an important element of the overall PPA package.

As set out with regard to the concerns raised by UCG, the PPA under section 10.2 contains terms and conditions which provide that YEC will have the opportunity to inspect the Diesel Units prior to purchase and be satisfied, acting reasonably, that the Diesel Units are in good operating condition and fit for their intended purpose. PWP has not questioned, challenged or addressed the adequacy of the terms and conditions set out in section 10.2 with regard to protecting YEC's interests in purchasing the diesel units pursuant to the PPA.

The PWP Final Argument assessment of the state or repair of these units and compatibility of these units with YEC's other generating facilities is based on comments that are not on the record and are not reflected in the evidence at the Resource Plan Hearing. YEC provided evidence in Resource Plan hearing and in this proceeding regarding the value of these units as a prudent acquisition that would enhance the over YEC system.

YEC sees no merit to the security issue raised by PWP and does not see how owning the units at the mine site will increase YEC's risk and reduce YEC's security and control over the units. Per 10.2(i)(i), the parties are committed to execute a sublease and an easement or right of way providing YEC with access to the units at all times.

It has also been amply noted throughout this review that the purchase payment arrangement with regard to these units will enhance (not reduce) YEC's security with regard to the Minto obligations to pay the Mine Spur Capital Cost Contribution.

It is also noted that were Minto to retain ownership of the units it is understood that they would not maintain the units at the Mine site in circumstances where their power needs were being met by YEC. It is most likely that Minto would sell the units after Commencement of Delivery. Thus, there is no support for the PWP's argument that if Minto retained ownership of the units YEC could "easily contract for the supply of any required energy from Minto for the grid."

9.0 LEVEL OF YEC SECURITY

PWP is the only intervenor to comment on the level of YEC Security and alleges that "YEC, by entering into this PPA with Minto, is investing in a mining venture", and notes the risk inherent in mining ventures. In questioning the value of YEC's security PWP provides the following comments:

- the YEC stands second to the Current Bank Financing and other miner's lien holders,
- most of the security is not easily convertible

PWP concludes that taken together this leaves YEC and ratepayers "virtually unsecured" and states that the YUB should require YEC to obtain all main line customer contributions and the estimated costs to construct and decommission the spur as a lump sum up front deposit from Minto before YEC commences construction.

Yukon Energy Reply

YEC categorically rejects the notion that it is investing in a mining venture.

The PPA provides for YEC to provide the upfront financing for the Mine Spur and for a $7.2 million Capital Cost Contribution towards the CS Project and sets out under Part 5 the terms and conditions upon which Minto will provide repayment of the Capital Cost Contribution to YEC after Commencement of Delivery. This is in essence a loan and not in any way a utility investment as such term is used in the ESRs (see also s. 3.3 of this Reply).

While the YEC Security is second to the Current Bank Financing, it has been amply noted throughout this process that Minto has committed under section 6.6 of the PPA and under the Direct Agreement, that the security under the Current Bank Financing is expected to be fully paid within the first few years of the Mine's life, (with Minto committed to paying off the Current Bank Financing by November 30, 2009 in the event that the BMO financing removes any call upon the SLF Agreement) leaving YEC with a first charge security interest over the Mine and its assets in the case of default by Minto.

10.0 DECOMMISSIONING COSTS

UCG and PWP were the only intervenors to address the issue of Decommissioning Costs.

10.1 UCG ARGUMENT

UCG provided no specific comments on decommissioning costs and noted support for the premise, as set out in the PPA, that Minto is fully responsible for all decommissioning costs for the Mine Spur. UCG did note a general concern related to the security provisions as they relate to the recovery of decommissioning costs and noted that where there was a premature closure of the Mine there may not be funds available to cover the required decommissioning costs.

YEC sees no need to reply to UCG's comments as the PPA Application and IRs set out clearly the measures adopted.

10.2 PWP ARGUMENT

In Final Argument, PWP submitted that YUB should require that YEC either obtain upfront contributions equal to 35% of the spur line estimated costs, or that the PPA be revised such that 35% of the actual cost to construct the spur are collected from Minto by four equal annual payments commencing at the end of the firm year of service. PWP rationalized the 35% figure for decommissioning costs on the following assertions:

- It is likely to take the same amount of labour and equipment to dismantle the mine spur as it will to install the mine spur (PWP assumes this is 50% of the spur cost)
- The salvage value will not exceed 15% of the origination value

PWP also asserts, without providing any rationale, that the decommissioning funds need to accrue within the first four years after the first year of service to the Mine.

Yukon Energy Reply

YEC submits that there is no basis for the Board to accept this 35% estimate for decommissioning costs as a reasonable estimate and PWP's submission on this matter should be rejected.
With regard to PWP's estimate that 35% of the original cost of construction will be required to ensure sufficient funds for decommissioning, it is noted that PWP's argument on this point ignores the evidence provided that the 25% figure in the PPA is based on a recent professional review.

YECL-YEC-1-19 states that the 25% figure used to determine estimated decommissions costs was derived using YEC's last depreciation study, which sets salvage costs for transmission components approximately averaging 25%, as follows:

- Poles and fixtures – 35%
- Brushing – 0%
- Survey Costs – 0%
- Overhead Conductors/Poles – 15%
- Overhead Conductors/Towers – 20%
- Substation Equipment – 15%
- Substation Buildings – 10%
- Substation Fences – 5%

PWP's 35% estimate also ignores the facts, adduced repeatedly in evidence in this review process, that it is anticipated that not all of the Mine Spur will be decommissioned at the end of the Mine's life and the facilities on the east side of the Yukon river are likely to be retained as long term infrastructure.
YEC notes that there is no merit to the suggestion by PWP that four equal annual payments (based on the 35% figure) should be paid into the Decommissioning Account after the first year of service to the mine. YEC has noted at various times that it was able to secure a one-time $850,000 Decommission Cost payment that would be paid into the Accrued Decommissioning Fund account and invested at 6.5% per annum pursuant to section 11.2(b) and adjusted under section 11.2(c) to reflect the actual Mine Spur Capital Costs.

Furthermore, the PPA pursuant to section 11.3, provides that should the actual Decommissioning Costs exceed the amount in the Accrued Decommissioning Fund Minto will pay the excess costs within 10 Business Day of the end of the month in which the costs are incurred.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

P. John Landry, Counsel for Yukon Energy Corporation

April 10, 2007