YUKON UTILITIES BOARD

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

and

IN THE MATTER OF an application by Yukon Energy Corporation for approval of a proposed power purchase agreement with Minto Explorations Ltd. with regard to the Minto Mine and Stage One of the Carmacks-Stewart / Minto Spur Transmission Project

REPLY ARGUMENT OF

UTILITIES CONSUMERS' GROUP

April 10, 2007

INTRODUCTION

1. The Utilities Consumers' Group (the "UCG") filed its Final Argument on April 4, 2007 with respect to Yukon Energy's proposed power purchase agreement (the "PPA") with Minto Explorations ("Minto"). Final arguments were also submitted by Yukon Energy, the Yukon Electrical Company Limited and Peter Percival.

2. The UCG has confined its reply argument to the argument submitted by YEC.

3. YEC makes mention of the recent Yukon Government financing announcements in its submissions. The UCG respectfully submits generally, with specific comments below, that the YUB has an obligation to consider the adequacy of the PPA in terms of not only the risk to ratepayers, but to taxpayers as well; that the Yukon Government is willing to finance the Project does not relieve YEC or the Board from ensuring that the Project and the PPA related to provide for a project that is economically viable, whether funded by rates or taxes.

REPLY TO YEC FINAL ARGUMENT

4. The UCG respectfully submits that much of YEC's final argument duplicates the evidence that is already on the record and summarizes it again for the Board and intervenors.

5. To the extent YEC has provided argument in addition to its review of its evidence, the UCG hereby submits specific comments on a number of YEC's conclusions in the order that they appear within YEC's final argument. YEC has not numbered the paragraphs in its final argument so the UCG has made best efforts to identify the referenced material.

<u>Page 1</u>

6. YEC indicates that Stage One of the proposed Carmacks-Stewart Transmission project including the spur line to the mine "*will enable YEC to deliver surplus hydroelectricity from the Whitehorse-Aishihik-Faro (WAF) grid to the Mine, displacing significant on-site diesel generation*".

7. According to YEC's application, only the proposed Low Grade Ore Processing Secondary Energy is supposed to be available from surplus hydroelectricity. If that is the justification to spend tens of millions of dollars, the UCG submits that this project is not warranted.

8. Given that peak energy requirements on the WAF grid are supplied using existing diesel generation, the UCG submits that YEC's proposal is simply substituting one diesel generation source for another. Without a clear determination of "significant", it is unclear what point YEC is trying to make with this comment.

9. YEC comments that the Yukon government has stated that it will contribute up to $10 million towards the cost of the CS project "*subject to YEC securing YUB approval of the PPA*" among other conditions.

10. According to the very limited information publicly available on the $10 million "commitment" by YTG, the funding is contingent on YEC obtaining YUB approval of the proposed PPA and receiving all necessary permits and approvals for the Project. The UCG submits that it is unclear what would happen to this potential contribution if the Board does not approve all

components of the currently proposed PPA. The UCG submits that it is too early to be relying on this potential contribution.

11. In any event, the UCG respectfully submits that the review of the PPA, insofar as it is a process undertaken at the direction of the YTG, is a process that remains concerned with the viability of the PPA as an instrument protecting ratepayers and, as a result of funding from the YTG, taxpayers from the risks of the Project. Accordingly the UCG respectfully submits that the PPA must demonstrably protect the total investment, whether that investment comes from ratepayers or taxpayers.

12. YEC argues that "*even absent the new YTG funding*" the proposed PPA "*includes all of the provisions required for this Stage One CS Project to be feasible*". The UCG submits that (as stated above) there are too many unknowns to consider the suggested YTG funding in any feasibility analysis for this proposed project. The UCG submits that it is far from evident from the limited information put on the record of this proceeding regarding rate design and project costs that the proposed project is feasible or will come in at the current cost estimate.

13. YEC goes on to argue that "*there is no doubt the YTG's new funding will serve to materially reduce the risk to ratepayers and ensure long-term rate stabilization*". The UCG submits that there is no evidence on the record of this current proceeding that any funding of the proposed project will lead to any "rate stabilization" however that term is being defined. As mentioned above and in the UCG's final argument, while the risk may have shifted from ratepayers to taxpayers, the risk persists.

<u>Page 2</u>

14. YEC argues that "*the PPA has been subjected to a detailed and thorough YUB review*". The process to review the proposed PPA was initiated on February 9, 2007 when the Board issued its Order 2007-01 and considered the proposed PPA review an extension of the review of the 20-year resource plan. The UCG submits that the review of the proposed PPA was significantly hampered by the lack of detailed review of the scope, variability, applicable risk factors and contingencies that may affect the Project's expenditures. The detailed examination of this information will not take place until the Board has the opportunity to conduct its Part 3 review of the Project.

15. YEC indicates that "*certain conditions, including YUB approval of the PPA by April 30, 2007, are for the benefit of both Parties*" but does not go on to specifically explain which conditions are to the benefit of both parties versus just to YEC. The UCG submits that a thorough review of the proposed PPA requires explanations as to which party benefits from specific clauses.

16. In footnote 1, YEC implies that it will be proceeding with placing orders for long lead equipment and cost commitments for final engineering design once a PPA is approved. The UCG submits that ratepayers should not be placed at risk of paying any costs until after the proposed Project has been subjected to a thorough Part 3 review and rates can be established through a comprehensive general rate application.

<u>Page 3</u>

17. YEC argues that "*there is more than sufficient information and analysis provided*" to approve the rates proposed within the proposed PPA. The UCG submits that 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. These costs will not be identified until both YEC and YECL participate in a general rate application. There can be no certainty of rates until this all-Yukon general rate application can be reviewed by the Board.

<u>Page 4</u>

18. YEC argues that the proposed 2008 rates were to be "*based on Yukon costs and regulatory principles and methods adopted in Yukon*". The UCG submits that it will not be until after a review of the next general rate application that all industrial-related costs can be properly determined.

19. YEC argues that "*Minto is relying upon the continuance of a relatively stable regulatory environment as the basis for its take-or-pay commitments*". The UCG submits that it is unrealistic to expect that the rates of Yukon utilities will stay clear of regulatory review as they have over the last 10 years. In fact, that would be unacceptable in an era where ratepayers are to pay rates that are based on the fair allocation of current costs.

20. YEC argues Firm Rate was needed by Minto to secure stable rates. The UCG submits that no other ratepayer has this assurance. Minto Mines should be subjected to same conditions as other ratepayers, including, for example, a fuel surcharge rider, otherwise they have an unfair position relative to other ratepayers.

21. YEC states that the proposed firm mine rate "*applies to all primary Industrial customers in Yukon*". The UCG submits that the proposed rate schedule does not correspond to this position. Schedule C of the proposed PPA indicates that the proposed firm mine rate is available "*throughout the service areas of Yukon Energy Corporation ("YEC") served by the Whitehorse-Aishihik-Faro and Mayo-Dawson systems*". This does not encompass all of the Yukon or any area services by YECL in which an industrial customer could be located.

<u>Page 5</u>

22. YEC argues that the proposed firm mine rate is based on "*cost of service principles and methods*" but neglects to indicate that the underlying data of its analysis is now 10 years old. The UCG submits that it is impossible to verify the proper allocation of all related costs without first knowing current costs incurred by both YEC and YECL.

<u>Page 6</u>

23. YEC argues that "*the proposed Firm Mine Rate is more than sufficient to recover the Yukon-wide utility costs of providing service to the Major Industrial Class in 2008*". The UCG submits that it is impossible to even identify the costs to be allocated to the industrial class without first conducting extensive cost of service analysis on the costs being incurred by YEC and YECL. It is premature to suggest that none of YECL's costs would be allocated to a Yukon industrial customer class in a proper cost of service analysis.

24. YEC repeats its argument that there is "no reasonable basis for concern that other ratepayers interests are materially prejudiced" by classifying all the Project costs as energy-related. The UCG submits that YEC's proposed classification of costs remains untested and has not been subject to a thorough evaluation with alternatives.

Page 7

25. YEC argues that Minto "*will continue to pay the industrial rate set by the Board for the grid electricity used at the Mine Site*" but the UCG submits that it remains unclear whether Minto retains the option of reverting back to on-site diesel generation for the bulk of its energy needs.

Page 8

26. See comments above in paragraph 19 regarding YEC's argument that the firm mine rate is applicable to "*all primary industrial customers*".

27. The UCG submits that there remains a high level of uncertainty regarding whether the addition of additional mine customers will trigger "*material and adverse*" impacts on rates that would allow Minto to back out of some of its proposed obligations.

Page 10

28. YEC indicates that "*Minto has not provided YEC with any specific proposed auditable reporting and control mechanisms*" regarding the distinguishing of electricity used to process low grade ore. While YEC indicates that the parties "*intend to work together*" on some form of control, the UCG submits that that is not enough to allow for a low grade ore processing secondary energy rate to be approved by the Board. The UCG submits that these controls need to be identified and incorporated into the specific conditions of a secondary energy rate before it can be approved by the Board. The UCG submits that the reporting and auditing process must be approved by the Board rather than simply left "*as reasonably required by YEC*".

Page 11

29. YEC argues that if Minto uses interruptible energy "*less water at dam sites will be spilled and wasted*". The UCG submits that water that is not used to generate electricity cannot be regarded as "wasted" since the need does not require its use. The UCG respectfully submits that if the cost of transmitting that interruptible energy is not properly captured and allocated to Minto, it may be ratepayer/taxpayer money that is wasted.

30. YEC argues that the lower rate will allow "*Low Grade Ore that might not otherwise be processed*" to be processed. The UCG submits that the minimal impact that the reduction in electricity costs has on the costs to process low grade ore is not the determining factor for an operation like the Minto mine.

Page 12

31. YEC makes note of the $5 million in "*new Eco Trust funding for YEC to install the Aishihik Third Turbine*" and that this project will now be advanced. YEC asserts that it "*might*" advance Aishihik 3 and "*might*" defer plans for Mirrlees Life Extension. The UCG submits that a project like the third turbine project should still be submitted to a Part 3 review since not all of the projected costs are covered by the proposed funding; likewise the decision to replace the Mirrlees Life Extension with the Aishihik Third Turbine would be considered as part of the review. The UCG submits that advancing the Project based on proposed funding is contrary to the need-based decision that the Board made on this project in its report on the 20-year resource plan.

Additionally, as noted with respect to the YTG funding for the Project, the risk has only shifted from ratepayers to taxpayers; it has not been reduced or eliminated.

32. The UCG also questions whether the Aishihik Third Turbine project will actually qualify under the Canada EcoTrust for Clean Air and Climate Change that was unveiled in February. The EcoTrust is designed to co-fund with the provinces technology development, energy efficiency, and other projects that will provide real results on the reduction of air pollution and greenhouse gas emissions. There has been nothing put forward on the proposed third turbine project that would qualify it for this funding, such that the UCG submits that it is premature for YEC to suggest that related concerns are no longer relevant to the proposed PPA.

<u>Page 14</u>

33. The UCG submits that it is not appropriate for YEC to base any part of its final argument on material that has not been made part of the record of this proceeding. In footnote 44, YEC refers to materials filed as part of the record of the review of its YESAB application. As far as the UCG knows, no YESAB-related material has been subjected to review or testing within the YUB's current PPA proceeding.

<u>Page 15</u>

34. YEC argues that once the diesel units are acquired, they "*will provide YEC with added security as to the recovery of the Minto customer contributions related to the Minto Spur*". The UCG submits that once YEC purchases the diesel generators, they are no longer an asset of Minto and so cannot be used as collateral related to debt. The UCG submits that it is inappropriate to assume that any money recovered from the sale of assets would be used to pay down any debt incurred by the mine. The UCG submits that it is more likely that proceeds from asset sales will be transferred to Minto's parent corporation.

35. Additionally the UCG submits that there is no compelling evidence in support of purchasing the diesel units in any event, particularly in the context of an application which relies on $15 million dollars of government funding on the basis of reducing reliance on diesel generation.

<u>Page 18</u>

36. YEC states that the PPA recognizes and addresses risks through various measures including the fact that YEC's obligation to construct the line is conditional of the mine commencing commercial operation by June 30, 2007. YEC argues they must secure the PPA by end of April, 2007 to purchase certain materials and equipment to have ready and available. UCG submits that with the above deadline for Minto to commence operation, coupled with the pending Part 3 review and the YESAB review, Yukon Energy cannot justify purchasing anything for this project before the June 30, 2007 date.

<u>Page 19</u>

37. YEC argues that the probability of Minto shutting down prematurely and defaulting on commitments before the MNRA is sufficiently funded is "*so extremely low that this risk provides no reasonable basis for not proceeding with the PPA and the CS/MS Project*". The UCG submits that it is beyond YEC's capabilities to forecast how successful the Minto mine operations will be and to make this type of declaration.

38. YEC suggests that it cannot mitigate the risk that it will require additional diesel generation. The UCG submits that the risk could be mitigated by requiring Minto to pay a fuel adjustment rider, as other ratepayers do.

<u>Page 20 to 23</u>

39. YEC asserts that it is financing Minto's capital contributions because Minto is unable to obtain conventional debt financing to pay for its Capital Cost Contribution or provide a letter of credit. The YEC then goes on to claim they have done Due Diligence. UCG submits that the inability for Minto to obtain conventional financing for their share of the project should be regarded as a significant risk factor that needs to be further addressed.

40. YEC asserts that financial institutions have conducted Due Diligence before undergoing loan agreements with Minto, giving YEC more confidence in their PPA in that Minto is a sound investment. The UCG questions, if all this Due Diligence shows Minto to be such a sound investment, why Minto could not obtain conventional loans from financial institutions for their share of the construction of the transmission line.

CONCLUSION

41. In conclusion, the UCG continues to be cautious about the ability of the PPA to address the risks of the Project and the appropriateness of the related approvals requested by YEC. Accordingly the UCG cannot support the approval of the PPA or the various approvals. It is the UCG's hope that the upcoming Part 3 Review may provide some of the information it believes is necessary to evaluate the actual exposure to risk that the Project entails, along with the ability of the PPA to address that risk. UCG notes, however, that it continues to assert that some of the requested measures and approvals, i.e. the request for a new firm industrial rate without conducting a comprehensive rate review, are simply inappropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10th DAY OF APRIL, 2007