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Our File No.: 12276-76

April 10, 2007

Yukon Utilities Board
19 - 1114 1st Avenue
Whitehorse, Yukon
Y1A 1A3

Att: Ms. Wendy Shanks
Vice Chair

Dear Ms. Shanks:

Re: Board Orders 2007-01 and 2007-03
Power Purchase Agreement
Yukon Energy Corporation and Minto Exploration Ltd.

Further to the Board's revised Schedule, please find attached herewith Yukon Electrical Company Limited's Reply Argument regarding the referenced matter.

Should you have any questions, please do not hesitate to contact the undersigned.

Yours truly,

BENNETT JONES LLP

Loyola Keough

Loyola G. Keough

Attachs.

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YUKON UTILITIES BOARD

BOARD ORDERS 2007-01 & 2007-03

POWER PURCHASE AGREEMENT ("PPA")

YUKON ENERGY CORPORATION ('YEC") and MINTO EXPLORATION LTD. ("MINTO")

YUKON ELECTRICAL COMPANY LIMITED ("YECL")
<u>REPLY ARGUMENT</u>

YECL has reviewed the various Arguments filed in the referenced proceeding and provides its response herein to a number of the matters contained in the submissions of YEC. YECL correctly anticipated a number of positions that would be advanced by YEC and, hence, it is not necessary for YECL to further address certain of these matters. A failure to address every aspect of YEC's Argument should not be interpreted as agreement with the submissions of YEC. To the contrary, unless expressly stated, YECL does not concur with the positions reflected in YEC's Argument. YECL is also concerned that YEC has either failed to address or addressed only in a passing manner certain of the issues raised by YECL, even though a discussion regarding these matters was clearly predictable based on the record developed thus far in these proceedings. YECL will monitor the Reply of YEC closely to ensure that it does not inappropriately seek to include submissions in Reply that should have properly been included in its Argument.

YECL will follow the same format reflected in its Argument to address the issues of concern to it.

1. Capacity Planning Criteria

YECL is very concerned that YEC has failed to address this matter in any substantive way, even though it is critically important to the overall acceptability of the proposed PPA and was raised by YECL during the IR process. In fact, it is clear that the PPA can not be accepted in its current form until this issue is resolved.

In its Argument (p. 6, footnote 15) YEC makes reference to the "revised capacity planning criteria <u>adopted</u> by YEC" (emphasis added). YEC completely ignores the fact that the criteria it has "adopted" is at odds with the express findings of the Board that has only recently been rendered. In its IR Responses YEC referred to a "misunderstanding" between YEC and the Board. As stated by YECL in its Argument, this matter needs to be addressed in these proceedings and YEC has not provided its position on this issue, including why it considers a reversal of the Board's findings to be appropriate. As a result, parties are not able to respond to any YEC proposal. Assuming the Board's recent findings stand (there has been no basis put forth to justify any change) the proposed PPA would not be consistent with this position.

Additionally, the impact of Minto not having backup supply at its site, once the diesel generation is sold to YEC, has not been adequately addressed. As mentioned previously by YECL, the consequences of this approach on the need for and timing of new generation facilities has also not been addressed at all by YEC. YECL reiterates that these issues need to be addressed before the PPA can move forward.

2. **Quantum of Capital Contribution**

In its Argument (p. 20; Appendix C), YEC devotes considerable time to the $7.2 M contribution it is "receiving" from Minto, even though such contribution is being financed by YEC itself. As stated by YECL, YEC has provided no reasonable basis to assess the appropriateness of this proposed contribution. YEC continues to rely on its response to YUB-YEC-1-7 to support its position, as well as Schedule B to the Electric Service Regulations ("ESR's"). The ESR's provide extensive detail and guidance regarding how a contribution is to be determined. Specific definitions of "Annual Cost" and "Cost" also direct that certain specific items be included in this determination. Despite this extensive guidance, YEC has failed to properly reflect Generation, as well as Transmission, costs in its assessment. In its assessment YEC has not shown any such Generation and Transmission costs that should be allocated to Minto. YEC has inappropriately reflected the incremental diesel fuel costs in its calculation, rather than a fair share of both existing generation and fuel costs. YEC continues to rely on very preliminary information to support the $7.2 M; and, in fact, will not have a detailed engineering cost estimate until May, 2007 (p. 33). In fact, YECL would expect that such detailed cost estimate will be with respect to the facilities YEC actually expects to construct, not the "proxy" 35 kV line being used for purposes of deriving the capital contribution. YECL reiterates its view that the lack of a detailed design estimate should further illustrate why the "fixed" contribution proposed by YEC should be rejected and replaced with a contribution that appropriately shares the construction risks with Minto and other customers.

YECL is also concerned that the $7.2 M is supposedly based on the "mid-point" in-service capital cost estimate for a 35 kV line. Little comfort exists that a mid-point estimate is achievable by YEC in constructing any such facilities. YEC's assertions that ratepayer risks are "either fully or almost fully mitigated" (p. 23, footnote 62) must be tempered by the realization that capital costs could exceed not only the mid-point, but also the high-point cost limit. The risk of this occurring can not be ignored, as such an occurrence would further diminish the benefits supposedly available to ratepayers.

YECL remains of the view that the level of capital actually spent on the facilities should drive the appropriate customer contribution. Other customers should not assume this risk, particularly in circumstances where significant benefits will accrue to Minto. The Board should not approve the customer contribution proposed by YEC as being adequate in the circumstances.

3. YEC's Financing of Capital Contribution

YECL remains of the view that YEC's proposal to finance Minto's contribution should not be accepted. YECL has detailed its reasons supporting this position in its Argument and nothing contained in YEC's submissions has altered the views previously expressed. The proposal advanced by YEC inappropriately shifts risks to YEC and its customers, in circumstances where it is obvious that such actions are not warranted. The fact that Minto can not access bank financing for the contribution should trigger "alarm bells" as to why this course of action should be avoided, not a decision to charge forward and place the risk on other customers. As indicated in Argument, the simple assertion by Minto that it will not proceed to interconnect absent this arrangement should not be viewed as determinative, in light of the significant savings that will be achieved by Minto.

YEC also makes reference to the special circumstances of Minto. YECL disagrees that any such "special circumstances" exist. It is certainly not unique that a customer would want grid service, but not want to pay a customer contribution or finance same. There is really nothing unique in this regard and this argument does not provide a basis for accepting YEC's position as being reasonable.

The Board must also be wary of the undesirable precedent that would be established if it accepts YEC's position.

4. **Maximum Utility Investment ("MUI")**

YECL has addressed this matter in detail in its Argument and reiterates the view that it would be more appropriate for the Board to develop a MUI for industrial customers than to deal with this matter on a case-by-case basis. As discussed in Item #2 above, the MUI must properly address the generation and transmission costs associated with serving an industrial customer. MUI is hoped to be stable over time and should not increase or decrease dramatically during periods of surplus or shortages of generation and transmission capacity. As such, in YECL's opinion, YEC has incorrectly concluded that Paragraph 3 of Schedule B would yield at least a $7.2 M MUI in Minto as generation and transmission costs have not been included appropriately.

5. **Mine Deferral Account**

It has become abundantly clear that the PPA, as currently presented by YEC, will create significant risks that can have adverse impacts on customers. This has now been openly acknowledged by YEC. The Mine Deferral Account purportedly mitigates these negative impacts. In reality the Deferral Account would deprive ratepayers of the immediate benefits of the PPA, if they in fact come to pass. In its Argument, YECL raised concern with respect to intergenerational equity. YECL is indeed concerned that present customers would be expected to pay the costs of the existing generation and transmission facilities used to serve Minto, while at the same time being deprived of the benefits resulting from additional revenues that would be realized from the new customer added to the system. YECL would prefer to see any benefits concurrent with the costs and address any future rate impacts at the time they occur. Generally, customers today get to see the revenues at the same time as they absorb the revenue requirement. This is not the result of what YEC is proposing. The proposed deferral account should not be accepted by the Board.

When asserting that the proposed project will provide positive benefits to ratepayers (p. 16-17), YEC consistently acknowledges that this is "...provided that the Mine operates for its expected life at its expected power loads." YEC likewise caveats what "might" occur in the event of a default by Minto with the statement that the Mine must be "sound and valuable" in order for grid power to still be taken by the Mine.

YECL submits that the viability of the mine is linked to the volatile commodity market. If commodity prices remain attractive (and profitable) Minto should find it economic to continue to produce ore. Likewise, in these circumstances a third party would reach the same conclusion. The contrary is also true. If commodity prices decline and the mine is not profitable for Minto to operate, it is unlikely any third party will face markedly different economics.

In such a situation, if the Mine is shut down because of low commodity prices, it is unlikely that operations would restart until the prices rebound. A significant time delay could occur in such circumstances, with the risks inherent in the proposed PPA being visited on ratepayers in the intervening period.

YEC also makes reference to the $10 M recently made available from the Government of the Yukon. Under YEC's proposal, ratepayers would not see any of the benefits from this contribution until after the proposed Mine Deferral Account is collapsed and any positive balance flowed through to ratepayers.

YECL is also concerned that ratepayer risks are enhanced by YEC's agreement to subordinate its position to that of the banks. Under the proposed PPA, the extent and duration of the risks the subject financial institutions are assuming, are substantially less than YEC is being asked to bear. This approach inappropriately increases ratepayer risks, beyond a level that is acceptable to the financial market.

6. Cost of Service

YECL's position on this matter has been clearly stated in its Argument and is simply reiterated here. Nothing further needs to be added in this regard.

7. Material Adverse Impact to Minto Savings

No additional comment is required on this matter.

8. **Applicability of Risks to YECL Service Territory**

No additional comment is required on this matter.

9. **Rate Schedule 35 (Secondary Sales)/ Measured Demand/ Confirmation of Low Grade Ore**

Contrary to the position taken by YEC in Argument (p.11), it would be inappropriate to accept the proposed secondary sales rate at this time. Until such time as YEC presents a specific proposal, including appropriate auditable reporting and controls that parties can assess and respond to, it is impossible to evaluate the overall reasonableness of YEC's proposal. This rate should not be approved at this time.

YEC appears to have shifted the responsibility for proposing properly formulated rates to Minto. YEC notes that "At this time Minto has not provided YEC with any specific proposed auditable reporting and control mechanisms . . . " (p. 10). This is done notwithstanding the recognition that such reporting is "as is reasonably required by YEC" (p. 10)(emphasis added). YECL is of the view that the responsibility for ensuring such mechanisms are in place rests with the utility and that approval of the requested rate cannot and should not be given until YEC properly addresses these issues. If and when YEC brings forth a complete proposal, the Board and parties can then comment on its appropriateness. Until that time, there is simply no basis for granting YEC's premature request.

10. **Purchase of Onsite Diesel Units**

YECL reiterates that the evidence provided by YEC is simply insufficient to allow the Board to reach a conclusion that the proposed purchase is reasonable. Additionally, the impact of this purchase (and the rights given YEC with respect to the use and location of the units) on capacity planning criteria has not been adequately addressed.

11. **Rate Modifications Applicable to Rate Schedule 39**

No additional comment is required on this matter.

YECL concludes that it would be inappropriate for the Board to approve the PPA as currently proposed. The concerns identified in YECL's Argument and above should be addressed before any approval is granted.

ALL OF WHICH IS RESPECTIVELY SUBMITTED this 10th day of April, 2007.

Bennett Jones LLP
Counsel for Yukon Electrical Company Limited