



PUBLIC INTEREST ADVOCACY CENTRE
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March 12, 2007

Yukon Utilities Board
Box 31728
Whitehorse, Yukon
Y1A 6L3

Attention: Wendy Shanks, Acting Chair

Re: YEC / Minto Power Purchase Agreement – Notice of Motion

Dear Ms. Shanks:

The Utilities Consumers' Group is in receipt of the responses to information requests submitted by Yukon Energy Corporation on March 8 and 9, 2007 as well as the Board's letter dated February 21, 2007 which responded to UCG's concern that YEC may refuse to respond to certain information requests:

"The Board is of the view that the Board's Rules of Practice address this concern in that if YEC refuses to answer some IRs, it is open to Intervenors to request the Board to direct YEC to provide a further or better response. The Board expects that YEC would not take advantage of the fact that there is no follow-up process and will provide complete responses in the first instance."

The UCG respectfully requests that the Yukon Utilities Board accept this letter as a Notice of Motion, and consider and provide a ruling on the following motion under rules 19, 11 and 12 of the Board's Rules of Practice.

The Utilities Consumers' Group requests that the Board issue an Order to the effect that:

Yukon Energy Corporation shall be required to provide all materials requested by the Board and intervenors by way of information requests that it has not provided based in part on claims that the requested material is not currently in its possession or is confidential in nature.

In support of this motion, the UCG provides for consideration by the Board (and all other parties to the proceedings) the following facts, information, comments, opinions, arguments and questions:

- On March 8 and 9, 2007, Yukon Energy Corporation (YEC) submitted responses to information requests related to the proposed power purchase agreement with Minto Explorations.
- YEC has made a claim for confidentiality for certain materials upon which the proposed power purchase agreement is based.
- The general principle that proceedings before the Board should be transparent and open to the public requires that all relevant materials be available on the public record. The need for transparency is especially important where the material is directly relevant to setting rates for a regulated monopoly such as YEC.
- The guiding principle for submissions to a regulatory body such as the Board is that confidentiality is exceptional. As has been the practice of this Board, the placing of materials on the public record is the rule and confidentiality is the exception. The onus is on the party requesting confidentiality to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case.
- There should be a heavy onus on YEC, as a public utility regulated by the Board, to justify a claim for confidentiality. All information pertaining to YEC's utility business should be available for scrutiny on the public record.
- Anyone who directly or indirectly contracts with YEC should be deemed to accept the risk that information pertaining to their direct or indirect relationships with the utility is subject to examination on the public record. As a publicly-owned entity, any information associated with the operation of YEC should be readily provided to a public review process.
- Confidentiality protection should not be granted simply because a party seeking such protection asserts "prejudice". Absent a convincing and objective demonstration by the party claiming confidentiality protection of the manner in which disclosure of the information will actually cause prejudice, the confidentiality request should be denied.
- Except in the clearest of cases, the Board should refuse to extend confidentiality protection to information pertaining to the performance of utility functions. The UCG submits that the Board's regulation of YEC should be carried on in public.
- The requested evidence is indispensable to the consideration of the issues and unless the most compelling reasons can be advanced by YEC in support of its claim for confidentiality, an overarching public interest in disclosure should prevail. YEC has not placed any arguments before the Board as to whether the material for which confidentiality is claimed is relevant so it is assumed that they are relevant.
- The central question for the Board is whether YEC has demonstrated that the desirability of avoiding disclosure of the material outweighs the desirability of adhering to the principle that hearings be open to the public. YEC has not

succeeded in meeting that onus. In essence, YEC has only argued that the very nature of the material for which it claims confidentiality supports the confidential treatment sought.

- There has been no disclosure of any perceived harm from the disclosure of this information to the public record.
- The regulation of public utilities must be carried out in as transparent a process as possible. Only very exceptional circumstances should justify the exclusion from the public record of material that is used in rate-setting. YEC has not demonstrated exceptional circumstances.
- While the UCG believes that the Board should reject YEC's requests for confidentiality protection, if the Board feels that certain information should be disclosed but only as confidential documents, then UCG submits that parties willing to execute an Undertaking of Non-Disclosure (see attached sample) should obtain immediate access to the information.
- With respect to YEC's refusal to provide requested documents claiming confidentiality, the UCG submits the following:

1. UCG-YEC-2-13

The UCG submits that YEC has made no objective demonstration of how or why disclosure of the July 2006 Mine Feasibility Study will result in prejudice. UCG submits that there is no good reason for this study to be accorded confidentiality protection given that it is being relied upon to justify YEC's claim that the mine has a reasonable life expectancy upon which to base a long-term power purchase agreement. UCG submits that the full Mine Feasibility Study should not be granted confidentiality protection and should be filed in response to this information request.

2. UCG-YEC-2-24

The UCG submits that YEC has made no objective demonstration of how or why disclosure of all the requested documents will result in prejudice to YEC or anyone else. UCG submits that these agreements are important to understanding the underlying security being provided to Yukon ratepayers through the proposed power purchase agreement. The Board's general policy requiring that all records be open for inspection should prevail.

3. UCG-YEC-3-20 and UCG-YEC-3-21

The UCG submits that YEC has made no objective demonstration of how or why disclosure of all the requested documents will result in prejudice to YEC or anyone else. The PLF and SF (or SLF) agreements appear to be cornerstones to the proposed purchased power agreement and are defined terms within the Direct Agreement. YEC makes references to these agreements throughout the Direct Agreement as well as in responses to other information requests (e.g., UCG-YEC-1-9 and UCG-YEC-1-28). UCG submits that these agreements should be provided to the Board and intervenors to

allow for a better understanding of the security that YEC is indicating will protect ratepayers from adverse impacts.

4. YUB-YEC-1-29

The UCG submits that the referenced final reports by Davis & Company and Behre Dolbear documenting their due diligence findings and conclusions on the Minto mine should be provided to the Board and intervenors once they are completed. YEC suggested that they would be completed “within a couple of weeks” and that YEC considered them to be confidential. UCG submits that given the importance of the due diligence review on the conditions of the proposed purchased power agreement, all such reports are required to be put on the record of these proceedings.

- With respect to YEC’s refusal to provide other requested information, the UCG submits that the following questions were not fully answered and requests an order that YEC provide further information as detailed below:

1. UCG-YEC-2-4

YEC failed to respond to part (a) of this information request.

YEC was asked to explain how the short-listed bidders were pre-qualified and to provide all correspondence and submissions related to the pre-qualification process. YEC provided a general explanation of how the pre-qualification process was conducted without providing any detail.

Given the past concerns raised by the Auditor General on the adequacy of YEC’s internal processes, UCG submits that the Board and intervenors need details of the pre-qualification process in order to ensure that adequate procedures were followed.

The UCG requests that YEC provide a more complete response which includes copies of all documents and evaluations conducted on the expressions of interest submitted. UCG would also like to understand why YEC intends to award a contract prior to the YUB completing its review of the proposed power purchase agreement.

2. UCG-YEC-2-6

YEC failed to respond to part (b) of this information request.

YEC was asked to provide a paper copy and a working electronic copy of the cost of service study used to determine that the proposed firm mine rate is sufficient to recover that portion of YEC’s 2008 revenue requirement allocated to the industrial rate class.

YEC responded that it “does not have an electronic copy of the COS materials to provide for external use”.

UCG assumes that related cost of service and rate design calculations were done using some sort of spreadsheet analysis and that this analysis includes the use of assumptions contained in the last cost of service analysis (1996/97) performed by YEC. UCG also assumes that YEC is withholding this analysis simply because they do not

want outside parties, including the Board, reviewing its work. YEC has not provided any other reason why the analysis (in paper and electronic form) is not being provided.

The UCG requests that YEC be directed to provide the requested documentation.

3. UCG-YEC-2-10

YEC failed to respond to part (a) of this information request.

YEC was asked to provide a paper copy and a working electronic copy of the cost of service study used to determine that the proposed peak shaving rate is sufficient to recover that portion of YEC's 2008 revenue requirement allocated to the industrial rate class for this service.

UCG assumes that related cost of service and rate design calculations were done using some sort of spreadsheet analysis and that this analysis includes the use of assumptions contained in the last cost of service analysis (1996/97) performed by YEC. UCG also assumes that YEC is withholding this analysis simply because they do not want outside parties, including the Board, reviewing its work. YEC has not provided any other reason why the analysis (in paper and electronic form) is not being provided.

The UCG requests that YEC be directed to provide the requested documentation.

4. UCG-YEC-2-28

YEC failed to respond to parts (a) and (b) of this information request.

YEC did not provide the names of members of the Boards of Directors of Yukon Development Corporation nor Minto Explorations Ltd. and the names of all affiliates to YEC and Minto and the names of members of their respective Boards of Directors.

For Yukon Development Corporation's Board of Directors, YEC's response was that the information requested is on the YEC web site. UCG cannot find a listing of YDC's Board of Director's on the YEC web site. UCG is trying to better understand the separation between YEC and YDC and whether there are distinct and separate Board members for these entities.

It is unclear from the response whether YEC has any other affiliates.

For Minto's Board of Directors, YEC provided a link to the web site of the Sherwood Copper Corporation which provides a list of its Board of Directors. UCG does not understand how Minto Explorations fits into the Sherwood Copper Company or whether it has its own Board of Directors. This illustrates the point that there is a lack of understanding by the public of the parties involved in the proposed power purchase agreement.

YEC does not contend that the requested information on Minto's affiliates is not available. They simply state that they do not currently have it in their possession. UCG submits that given YEC's relationship with Minto, this response reflects a lack of expected effort on YEC's part.

The UCG requests that YEC be directed to provide the requested information.

5. UCG-YEC-3-1

YEC failed to respond to the request for a copy of the written approval received by Minto from Macquarie Bank.

While it is interesting that the Direct Agreement “outlines” the written approval received by Minto from Macquarie Bank, UCG submits that the due diligence efforts of the Board and intervenors would be better served by reviewing the actual written approval.

The UCG requests that YEC be directed to provide the requested written approval.

6. UCG-YEC-3-2

YEC failed to respond to the request for confirmation that the referenced clause implies that the Direct Agreement supercedes any Order issued by the Yukon Utilities Board and the Yukon government.

If a document clause could actually “speak for itself” as indicated by YEC in its response, then there would be no need to submit information requests to better understand the implications of the clauses of the Direct Agreement that was submitted late in the proceeding.

The UCG requests that YEC be directed to provide the requested information.

7. UCG-YEC-3-6

YEC failed to adequately respond to part (b) of this information request.

UCG was looking to understand whether or not the referenced clause indicated that money that would normally have gone to YEC to pay for Minto’s power bill, separate from any payment for assets, could be redirected to the Finance parties. It is unclear whether YEC’s response means that this money could not be redirected to the Finance parties or not.

The UCG requests that YEC clarify its response to this information request.

8. UCG-YEC-3-10, UCG-YEC-3-11 and UCG-YEC-3-14

In responding to each of these information requests, YEC failed to confirm that the costs of the duplication of invoices and statements, notices to lenders and notification services will be directly assigned to Minto or the Agent and will not be paid by other Yukon electricity ratepayers or taxpayers.

UCG submits that despite YEC’s claim that the additional costs may not be material, ratepayers want to be assured that directly assignable costs will in fact be assigned to the party responsible.

The UCG requests that YEC be directed to provide the requested information.

9. UCG-YEC-3-17

YEC failed to respond to this information request.

While YEC's response indicates that there may be certain circumstances where the Macquarie Bank "may elect to be responsible for certain amounts owing by Minto", this does not clarify the issue for UCG.

The UCG requests that YEC be directed to confirm whether or not the referenced clause effectively puts YEC, Yukon electricity ratepayers and Yukon taxpayers at risk of having to pay Minto's liabilities should Minto be unable to pay.

10. UCG-YEC-3-18

YEC has not fully responded to this information request.

UCG requested the name and title of the individual that has signed the Direct Agreement on behalf of Minto Explorations Ltd.

The UCG requests that YEC be directed to provide the requested information.

The above Notice of Motion and supporting arguments are respectfully submitted for the Board's review and consideration.

The UCG requests that the Board postpone the schedule for final arguments on the proposed power purchase agreement until the Board has had time to address this Notice of Motion and YEC has responded as may be directed by the Board. UCG further requests that the need for answers in accordance with the above motion be considered in view of the impending Part 3 Review of the Project and the possible combination of that proceeding with the current one.

Should you have any questions on this submission, please do not hesitate to contact me.

Yours very truly,



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Counsel for UCG
CC: all parties