

March 13, 2007

file number: 84813-00071

Ms. Wendy Shanks, Acting Chair
Yukon Utilities Board
Box 31728
Whitehorse, Yukon Y1A 6L3

Dear Ms. Shanks:

Re: Letter from Minister re Part 3 Designation of Carmacks-Stewart Transmission Line

Yukon Energy is responding to the Board's letter of March 9, 2007 regarding the March letter to the Board from the Yukon Government's Minister of Justice. The Minister's letter indicated that it is the government's intention to designate the Carmacks-Stewart (CS) transmission line as a regulated project under Part 3 of the Public Utilities Act (the "Act") and refer the project to the YUB for review and recommendations.

Recognizing that the CS Project will be designated as a regulated project under Part 3 of the Act, the Board will now need to address, in an integrated manner, two separate matters:

1. **Approval of YEC's PPA Application of February 8, 2007:** The Board has a full review process in place to address this matter prior to the April 30, 2007 condition date in the PPA, including hearing provisions for information requests to YEC and two rounds of submissions by all interested parties.

The Board has noted in Order 2007-1 and its November 21, 2007 letter that this PPA hearing process is related to the earlier Resource Plan oral hearing from November 14 to 16, 2006; the Resource Plan hearing also included information requests to YEC and two rounds of submissions from all interested parties addressing, among other major projects, the Carmacks-Stewart Transmission Project as proposed by YEC. In its letter of February 21, 2007 responding to comments from the Utilities Consumers Group and Yukon Electrical Company Limited, the YUB stated, "the Board is considering YEC's application like any other application" and "The Board will adjudicate on the matters requested by YEC."

YEC notes the following as regards the PPA Application process now before the Board:

- (a) **PPA Approval by the Board is a precondition for YEC to proceed with Stage One of CS Project:** The ability of YEC to proceed further with Stage One of the CS Project is dependent on approval by the Board of the PPA.
 - (b) **April 30, 2007 date for such approval is a condition in the PPA:** The PPA approval by the Board by April 30th is a condition, to the benefit of both Minto and YEC, of the PPA proceeding. This date reflects the need for YEC to order in May (with cancellation provisions) long-lead equipment such as power transformers to maintain the in-service target of September 30, 2008, i.e., YEC is concerned that it would not be prudent to place such an order, or proceed with costly final engineering and tender package preparation, until the YUB has approved the PPA. As reviewed in IR responses during the PPA process, ratepayer benefits are at least \$250,000 for each month of avoided delay in the project in-service, ignoring added risks and costs that occur as in-service delay is extended through 2009.
 - (c) **PPA review process established by the YUB has completed Information Request (IR) stage and is moving to simultaneous arguments by all parties on March 15:** In the PPA review process established by the Board, as of Friday March 9th YEC has responded to over 350 IRs on the PPA from the Board and four intervenors. Based on the process set out by the Board on February 9th in Order 2007-1 (and clarified by letter on March 5), all parties are currently required to submit simultaneous final arguments by March 15 and simultaneous reply arguments by March 22.
2. **Review and recommendations to the Minister on YEC's Part 3 application to the Minister for the CS Project:** Once an OIC under Part 3 of the Act designates the CS Project (including Stage One) as a regulated energy project, YEC cannot start construction of the CS Project without receiving from the Minister an energy project certificate for the Project; further, YEC cannot commence operation of the CS Project without receiving from the Minister an energy operation certificate for the Project. Such certificates can only be issued after a number of processes have been completed, including:
- (a) **Designation by OIC of CS Project as a regulated project:** The Minister's March letter says such designation is expected to occur within the next few weeks (which

if correct could well be after the time period currently set out for simultaneous arguments on the PPA Application - see item 1(c) above).

- (b) **YEC applications to the Minister for such certificates:** YEC, as proponent, is required under Section 39 of the Act to submit such application for each certificate and such applications must contain the information prescribed by the Minister.
- (i) Stage One application – YEC currently is only seeking a certificate, if needed, to proceed with Stage One of the CS Project. YEC currently therefore plans at this time to submit a Part 3 application only for Stage One.
- (ii) Stage Two recommended by YUB to require separate later YUB review – The Board’s January 15, 2007 Report on the Resource Plan addressed the CS Project by stage, and recommended that Stage Two only proceed after YEC has a firm commitment to connect the Carmacks Copper Mine (which implies a power purchase arrangement as well) and then comes back to the Board for review of specific proposals to develop Stage Two. YEC is currently not in a position to proceed with Stage Two as recommended by the YUB.
- (c) **Referral of such Part 3 YEC applications to the YUB for the Board to submit a report and recommendations to the Minister:** The Minister will submit the YEC applications to the YUB, as required under Section 40 of the Act. The Board, after its review in accordance with terms of reference from the Minister, must submit a report and recommendations to the Minister, i.e., the Board has no decision-making mandate as regards a Part 3 application.
- (d) **Project certificate can be issued by Minister only after YESAB process is complete:** This fundamental requirement means that YEC must treat any Part 3 energy project certificate required for Stage One of the CS Project as part of the Government Approvals condition in the PPA. (Section 1.1(i) specifies currently this to occur on or before June 30, 2007; however, such approvals are conditional on YESAB process completion prior to that date; this PPA condition is for the benefit only of YEC, such that YEC alone will be able to assess at that time the extent to which any YESAB-related delays affect project viability.)

The Part 3 review by the Board will now be required as soon as the Board receives the necessary OIC designation, YEC application and Minister's terms of reference. In that light the following points are noted

- Any application brought by YEC under Part 3 for the CS Project is a separate and distinct proceeding from YEC's PPA application and therefore cannot be viewed by the Board as part of the PPA proceeding (in the same way as the Board has stated that YEC's PPA Application cannot be viewed as part of the Resource Plan proceeding). Ultimately, the Board's orders regarding the PPA Application will be separate from its report and recommendations to the Minister under a Part 3 application review.
- However, YEC agrees that the Board's review of the PPA will be related to the Part 3 review envisaged by the Minister's letter (in the same manner as the Board recognized the PPA review to be related to the earlier Resource Plan review) and therefore where feasible YEC supports the integration of the two review processes as long as YUB adjudication of YEC's PPA Application is completed by April 30.
- YEC believes that notwithstanding that the Part 3 review and the PPA Application are legally distinct proceedings, an integrated approach which recognizes the Board's separate mandates while at the same time ensuring that the work carried out by the Board and interested parties in the PPA proceeding is taken into account by the Board in both proceedings will allow the matters to be dealt with in a timely and efficient manner, and avoid duplication.
- To accomplish this result the Board can use the process established in response to YEC's PPA Application (an application which under the Act it is required to rule on) to inform the review it will be required to undertake pursuant to Part 3 -- keeping in mind YEC's need to ensure that the Board makes the requested orders in response to YEC's PPA Application on or before April 30th. Proceeding in this way will allow the Board to fully utilize its findings in the PPA Application as fundamental inputs to the Board's Part 3 review of Stage One CS Project's need, justification, impacts and risks.

Subject to the Board addressing any motions raised by parties involved in the PPA process, YEC submits that the Board can best assist the Part 3 review process and all interested parties by proceeding as it has currently directed for final and reply arguments on YEC's PPA Application. YEC notes that this approach would not in any way reduce the Government of Yukon's ultimate control over the CS Project through the Part 3 process, nor (given the status of the PPA review) prejudice the ability of interested parties to participate in a similar manner in review of YEC's Part 3 application as soon as it can be submitted to the YUB.

Yours truly,

DAVIS & COMPANY LLP

Per:



P. John Landry
PJJ/sas