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Yukon Utilities Board (YUB)
Box 31728
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REBUTTAL ARGUMENTS
to
Yukon Energy Corporation's (YEC) Final Arguments of 07/04/04
Supporting YEC's Proposed Power Purchase Agreement (PPA) with Minto Explorations
Ltd. (Minto)

The following rebuttal arguments are provided for the YUB's thoughtful consideration:

1.0 INTRODUCTION

IR Process:

It is not so much or important how many IRs are responded to but how adequate the responses are. Had there been an opportunity to revisit IRs and had YEC known it would be subject to cross examination on its answers the YEC responses likely would have been more forthcoming and comprehensive. In some cases I found YEC's responses evasively generalized. Unfortunately, I recognized too late that some of the questions I posed were not adequately phrased to extract the information sought. A second round of IRs would have greatly assisted me and other parties in clarifying many of the issues.

PPA Risk Mitigation:

I would think that every one recognizes that the YTG \$10 M contribution " --- will serve to materially reduce the risks to ratepayers ---". However , this \$10 M is one of a number of funding arrangements for financing the transmission line. YTG's contribution does not in any way relieve Minto from paying its fair share as a contribution under the PPA. And it certainly does not alter the risks YEC is assuming under the PPA to collect either Minto's fair share of the main line costs or for the recovery of YEC's costs to construct and decommission Minto's mine spur line.

Relevant Information Before YUB:

I disagree with YEC's claim that it has provided all currently available and relevant information sought by the intervenors. I contend that complete disclosure has not been achieved as much important information was denied to the YUB and intervenors by YEC's hiding behind the claims of confidentiality. Thus the review has been less than thorough. I note that no intervenor provided or submitted any evidence on any thing to the YUB. This lack of intervenor evidence, especially from YECL regarding COS issues as a case in point, is a very serious concern. I submit that the terms and conditions of the Orders as requested by YEC should be altered, amended or rejected by the YUB in accordance with what the YUB considers to be appropriate in its own right and in accordance with the YUB's acceptance of the valid concerns and arguments of intervenors.

2.0 TIMING REQUIREMENTS & CONDITIONS

YEC's contention that the timelines within the PPA must be completed or the PPA will terminate is specious. Why would Minto or YEC wish to terminate once and for all the purchase and sale of power when both parties are likely to benefit by such an arrangement? Minto will realize very large power cost savings each year of operation by hooking into the grid. Even if the transmission and spur line projects were delayed by a year, the npv of savings to Minto will still run in the \$14 M range. YEC won't lose Minto as a customer as a result of a year or even 18 months delay in the delivery of grid power. And the Parties to the PPA surely and fairly easily can waive, alter or amend the terms and timelines by a relatively simple further written agreement. What were the Parties to the PPA planning to do in the very conceivable event that the YUB requires / orders substantive changes to the existing PPA?

While YEC's statement that IRs from intervenors did not generally question either the nature or reasonableness of the timeline conditions is somewhat accurate, the reason these questions were not raised in the IRs is because YEC had provide its answers in the PPA Term Sheet and in the PPA application to the YUB. I find this argument by YEC that intervenors ignored the timelines issue as disingenuous in the extreme. Both UCG and I in response to the PPA Term Sheet questioned why the YUB should be bound by timelines YEC was attempting to impose on the process. Surely UCG's and my comments on the PPA Term Sheet form part of the record and YEC could have responded to these initial inquiries in a full and forthright manner. It is YEC who ignored the intervenor's concerns in this regard.

It would be much preferable, and in the long run financially prudent, to ensure that the terms and conditions of the PPA (and the rates plus the financial obligations of Minto that are to be collected through the PPA) are established in a fair and reasonable manner at the lowest possible risk and pay the costs of delays rather than to permit the PPA to go forward in its current form.

3.0 PPA RATES & IMPACT ON WAF SYSTEM

3.1 PPA RATES:

Within the YUB processes now in place, even if the YUB orders changes to the terms and conditions of the PPA that affect rates, YEC and Minto, working diligently, will be able to adjust the PPA accordingly so as to achieve certainty for 2008 (interim and refundable) rates while still having sufficient time to meet other commitments plus enough lead time to order materials and equipment. It is not the YUB processes that are likely to cause delays it will be the YESAA process and the obtaining of environmental licenses and permits that will be the hold up. The YUB should not feel that it is pressured to approve, without amendments, the proposed rates or any of the terms and conditions in the PPA

3.1.1 Firm Mine Rate/COS:

To reiterate, the COS relied upon by YEC is too out dated to be considered acceptable and thus rates if approved should be interim refundable only. It is also possible that YECL may apply for a GRA early this fall, as per the YUB's recommendations in its report to the Minister relating to the 20Year Capital Plan, which could lead to the establishment of new rates throughout all classes by early 2008.

To be fair Rate Schedule 39 should be subject to the fuel adjustment rider as all other customer classes are subject to this.

Peak Shaving Rate Option:

On the face of it this appears to be a reasonable option. However, to encourage power quality controls by Minto so as to reduce impacts on other customers and also to further entice Minto to employ this option demand charge calculations should be run over all months of the year.

3.1.2 Low Grade Ore Processing Secondary Power Rate:

This Schedule 35 in its current form is discriminatory as it does not permit access by other Industrial customers to obtain this rate unless the customer mines and processes low grade copper ore. The reporting mechanisms and the lack of metering will pose problems that are likely to lead to costly disputes. This Schedule should be rejected by the YUB and resubmitted by YEC as a simple seasonally available fully interruptible metered secondary power rate available to all Industrial Class customers. The 6 cent rate appears reasonable at this point. But it may change with a new GRA and COS well before Minto or any other Industrial customer makes use of it.

3.2 IMPACT ON WAF SYSTEM:

The March 30, 2007 announcement by YTG to fund the Aishihik third turbine, while a fact, has not been reviewed during the current YUB process. However, if the advancement of its construction is timely it should help to reduce some of the need for winter peaking diesel. With this in mind, it may not be necessary for YEC to consider the purchase of all or any of the old second hand abused diesel units at the Minto mine site. Refurbishing the YEC's secure Mirrlees diesels at Faro and Whitehorse would appear to be a far safer, less risky and a decidedly more prudent investment than buying any of the old mine diesel generators.

3.2.1 Impacts on WAF Loads, Forecast Generation & Surplus Hydro Generation:

Aishihik Third Turbine:

See note above.

Yukon Diesel Generation:

See note above.

If the YUB prohibited YEC from purchasing the Minto diesel units on the grounds that such a purchase would be considered in the circumstances as being imprudent, this would not prevent YEC from entering into a reverse PPA with Minto; whereby Minto as directed by YEC could supply power for its own use or wider grid needs at a reasonable fixed rate approved by the YUB. This would considerably reduce the risk and I contend ultimately the costs to YEC and the rest of its ratepayers while at the same time reducing the need to use diesel generation in Whitehorse.

YEC's reference to YESAB filings and the inclusion of tables in Appendix A appear to be an attempt to bootleg new information as "evidence" onto the record. I don't recall YEC providing this information for review under the YUB process. This is the argument stage not the time to introduce new "evidence".

3.2.2 Diesel Units at the Mine:

I don't buy the argument of enhanced financial security provided by the PPA diesel unit purchase terms, because the purchase of these units is imprudent when one considers their age, likely state of repair, location and lack of physical control / security exercised by YEC.

These units, as mentioned above, could remain owned by Minto. Then YEC could arrange a reverse PPA whereby YEC pays for power that Minto provides to itself and if the diesels fail to meet Minto's needs it's Minto's problem and YEC does not pay for power not delivered.

While the diesel units are portable there are two and six year restrictions on their removal. It seems likely that Minto will only allow the oldest and poorest maintained units to be removed from the site first not the newest best maintained. The third hand resale value of these units is likely to be very low.

The Mirrlees are already owned by YEC their condition is well known and they are all securely under the control of YEC. All-round, the rehabilitation of the Mirrlees is a far safer investment in all respects for YEC and the rest of the ratepayers than is the purchase of the mine units.

4.0 PROTECTION FOR RATEPAYERS

4.1 PPA IMPACTS RE: OVERALL RATEPAYER BENEFITS & RISK:

4.1.1 Ratepayer Risks:

The best and safest way to ensure there are both short and long term benefits to YEC and the other rate payers, is for the YUB to order YEC to secure: an upfront contribution from Minto to fully cover Minto's fair share contribution to the actual final cost to construct the main transmission line and; upfront down payments to fully cover the actual final costs for YEC to construct and decommission the mine spur line.

Alternately, the second best way to protect the other ratepayers from YEC's imprudent financing risks inherent to the PPA is to have the YUB order that, should Minto default, any direct Minto financing losses sustained by YEC as a result of Minto's default shall be at the sole expense of YEC and that such unrecovered losses shall be excluded or deducted from the YEC rate base.

Normal Risks Identified and Addressed in PPA

One of the best ways to reduce the normal risks to YEC and its other ratepayers regarding the CS Stage 1 project is to ensure that Minto's \$7.2 M contribution has been fairly determined based upon detailed cost estimates, which have yet to be provided by YEC but are expected shortly via the Part 3 hearing, and actual costs incurred. And in addition, structure Minto's contribution such that it is not a fixed amount but either a fixed percentage or determined as a ratio of the final costs to construct the spur line and the main transmission line.

PPA-Specific Risks

Surely YEC will construct the transmission line if Minto goes into commercial operation after June 30, 2007 as long as Minto agrees to purchase power from the grid when available. I don't see how this date addresses risk in any way at all. I don't understand YEC statement or position in this regard.

With respect to Minto's failing to establish additional reserves, unless YEC retains an expert consultant to verify that there are such additional reserves YEC will be relying on Minto alone. Thus the risks here may still exist or even increase but remain unrecognized.

Regarding limits to Minto's relief from its take-or pay obligations, if Minto shuts down it will not be earning income to pay for power it does not need because it is shut down. I don't see any risk reduction here. Sounds like default to me and an expensive lawyer driven trip to the courts.

Minto's security to YEC is primarily in the form of claims and miners liens on claims which YEC has agreed not to enforce until the banks security has been satisfied. Being second after the bank is poor security. And claims that may have large environmental reclamation costs attached that are far in excess of any known or potential mineral value are liabilities not secure assets.

The terms that limit Minto's ability to alter its financing with its lenders do not prevent the lenders from calling their loans on default by Minto. And, as I read it, most of the protections in the Direct Agreement were for the benefit of the lenders not YEC.

With respect to the Mine Net Revenue Account, now that YTG has committed to finance the line to the tune of \$10 M there is probably nothing to justify the need for this account and its inherent intergenerational inequities make it distasteful.

I agree with YEC's statement that "the primary PPA related risk that cannot be fully mitigated arises from YEC's financing of the Mine Spur and the CS Project contribution combined with the possibility that the Mine may shut down prematurely." YEC can do little to protect itself and its other ratepayers from the risk of a premature mine shut down. But, by refusing to finance the Mine Spur and the CS Project contribution and requiring Minto to upfront 100% of all the costs for the spur and the fair contribution to the main line, YEC can avoid entirely the imprudent risks associated with such financing. YEC is a regulated public utility not a bank or a financial institution and the YUB should not approve YEC taking on such risks.

Extreme Near-Term Risks

YEC has acknowledged that there extreme near-term risks. These extreme risks are all associated primarily with the imprudent financing arrangements that YEC is committed to under the terms of the currently proposed PPA. The only way to protect YEC and its other ratepayers from the majority of these extreme risks is if the YUB orders YEC not to be involved in the financing of either Minto's capital cost contribution to the main line or Minto's requirement to pay the full costs to construct and decommission the spur.

Capital Cost Contribution Financing by YEC etc.

Minto's inability to obtain conventional debt financing should not be YEC's problem to solve on the backs of its other ratepayers. If Minto can't obtain debt financing it could try a new issue of equity financing through its parent Sherwood Copper. This inability of Minto to raise debt financing speaks volumes to the unacceptable business risk that potential financing sources must attach to the Minto mining venture, its ore reserves, its operational plans and the future market price for copper. If this operation is too risky for conventional debt financing institutions to consider it is certainly too risky for a regulated public utility to underwrite! YEC should be required, in YEC's own best interests, the interests of its other ratepayers and all the tax payers of the Yukon, to stick to generating, transmitting and selling power only and not be permitted to earn income from interest on highly speculative business loans.

No 100% upfront contributions by Minto to the project, too bad - no connection to the grid and no grid extension! YEC and the rest of its ratepayers should not assume any of the Minto business risks.

What is so special about Minto's circumstances that YEC should consider not following the standard North American industry wide utility practice of requiring new customers to upfront all connection costs?

The vast majority of Yukoners are not interested in exciting highly speculative opportunities pursued by their publicly owned electric utility. They are concerned and interested in fair rates, prudent financial management and the safe acquisition of infrastructure assets.

YEC's one and only obscure reference to the Duck Pond Mine precedent in Newfoundland ignores the fact that Newfoundland Power Corp (or whatever it is named) is a huge enterprise with enormous revenues and assets probably a thousand or more times as great as YEC's and that there are at least 10 times more power customers in Newfoundland & Labrador to carry minor (or miner) financial highly speculative risks than in Yukon.

Due Diligence & PPA Protection etc.

The value of mine ore reserves are based on three major factors, tonnage, grade and expected market prices. Tonnage and grades can usually be determined fairly accurately in advance of exploitation by careful conventional diamond drilling programs, unbiased sampling and good experienced geological interpretations. Thus tonnage and grades can become hard scientific facts. However, the prediction of future metal prices is at best an experienced art and at worst highly speculative wishful conjuring.

While the financial due diligence review by Behre Dolbear (BD) conservatively forecasts annual long term prices for copper at US \$1.20 - \$1.30 / lb., these figures are only quoted and provided in an unsigned summary of the BD report. These price figures and the calculations of ore reserves were, as far as I can determine, based primarily upon BD's review of previous reports prepared by Hatch Ltd. and SRK consultants. Neither of these two reports nor the full BD report have been filed for review or tested through the YUB process. Therefore, none of them can be considered as expert evidence or fact. The fact is that experts in all fields do make mistakes. Only last year, for example, Hatch Ltd.'s feasibility report, filed with the securities regulators as a 24-101 requirement, on the Yukon Zinc project was so badly flawed it had to be withdrawn. The fallout from this withdrawal, subsequent corrections and re-filing was that Yukon Zinc's share price, in a matter of only a few days, fell over 50% and has yet to recover.

All three of these reports should be viewed by the YUB as being YEC's arguments only - not tested facts.

Mine Net Revenue Account (NRA)

To reiterate, now that YTG has committed to finance the line to the tune of \$10 M there is probably nothing to justify the need for this account and its inherent intergenerational inequities make it distasteful.

Much of YEC's argument under this heading speaks to instability due to a variety of factors e.g. temporary shut downs, increased costs for YEC to provide power, permanent premature closure, etc. All of these demonstrate that the Minto venture is risky. The NRA can't possibly offset these risks sufficiently to reduce the risks to an acceptable level. The need for this account would completely disappear and the risks to YEC and its other ratepayers would be substantially reduced if the YUB ordered YEC to obtain full upfront contributions from Minto.

No intervenor or the YUB staff has had the opportunity to review, test or argue what impacts of the \$10 M contribution to the CS project are likely to be and it would be inappropriate for the YUB to consider this new information as anything but argument.

Overview of Capital Cost Recovery Risk over Mine Life

It appears that both YEC and I argue the same thing over and over and over again. YEC claims the risk management efforts are acceptable and it should be permitted to finance Minto's contributions over an extended period of years. And I argue that the risks are unacceptable but could be avoided and also that YEC's financing commitments under the PPA are extremely imprudent. By now the YUB must be tired of hearing these never ending harangues.

Security Provisions Related to Ratepayer Risks

Default by Minto could lead to a number of outcomes depending on remaining reserves and copper prices and how soon prices recover. Macquarie's debt may be retired by the time of default and Macquarie would then likely have no interest in taking over operations at the mine. Thus Minto could well be driven into receivership or bankruptcy and it may be years before the mine reopened under a new operator. YEC exercising its security could end up with the mining claims and a mothballed mill facility all of which it would have a challenge in finding a purchaser for. Claims and mills in isolated location are not readily convertible to cash. Once the mill is heavily cannibalized or salvaged the remaining reserves may not support refurbishing the old facility or constructing a new mill i.e. the reserves remaining at Whitehorse Copper even with today's high prices for copper could not support the cost of providing a milling facility. The claims may have attached to them environmental remediation cost which make some or all of them liabilities not assets worth attaching i.e. the claims at Faro. The benefits of and supposed security protections within the proposed PPA do not, in my opinion, compensate for the extreme or high risks to which YEC and its other ratepayers are being exposed.

Extensive Due Diligence Undertaken by YEC

As I have stated previously absolutely none of the due diligence information YEC refers to has been fully tested under the current YUB process. In fact, YEC has successfully hidden the reports to which it refers behind confidentiality escape claims.

4.1.2 Timing of Ratepayer Benefits

Use of Mine Net Revenue Account Focuses on Rate Stability & Other Deferral Account Issues

It is the extreme short term risks that cannot be mitigated sufficiently by this account that is of concern to me more than the use of this account to delay into the future the use of the Mine-related benefits. The delay of benefits creates the intergenerational inequities and this is highly undesirable. In the past similar type "slush fund" accounts have been converted for other uses by YEC and this temptation should not be encouraged. The NRA as stated earlier would have no justification at all if Minto made full upfront contributions and deposits to cover its capital cost obligations. In addition the \$10 M contribution by YTG to the first stage of the CS project will effectively make this NRA redundant whether or not this new information is tested by the YUB process.

I respectfully submit all the above rebuttal arguments for the YUB's consideration with the hope that at least some of it will be of assistance in the Board's deliberations and determinations.

Sincerely,

P. W. Percival, P. Eng.