

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

and

**An Application by Yukon Energy Corporation (YEC)
for approval of the Power Purchase Agreement (PPA) between YEC and
Minto Exploration Ltd.**

BEFORE: W. Shanks, Acting Chair) March 26, 2007
 B. Morris)
 R. Hancock)
 M. Phillips)

BOARD ORDER 2007-03

WHEREAS:

- A. On June 1, 2006, Yukon Energy Corporation (YEC, or the Company) filed an application with the Yukon Utilities Board (the Board) to review its 20-Year Resource Plan: 2006-2025 (Resource Plan) to address Yukon's major electrical generation and transmission needs;
- B. The Resource Plan sets out YEC's expected near-term and longer-term requirements. Four near-term projects are proposed in the Resource Plan. Four alternatives, based on various scenarios to meet the needs of industrial customers, are set out to meet longer-term requirements. Certain near-term planning activities are proposed to protect longer-term options to address new load requirements;
- C. The Minister of Justice of the Government of Yukon requested that the Board review and hold a hearing on the Resource Plan. The Board forwarded its report with its recommendations on YEC's Resource Plan to the Commissioner in Executive Council on January 15, 2007;
- D. In accordance with YEC's commitment and the recommendations in the January 15, 2007, report, on February 9, 2007, YEC filed the finalized PPA for review and approval by the Board;
- E. In Board Order 2007-01, dated February 9, 2007, the Board established a procedural schedule for the PPA proceeding;
- F. Through Board correspondence dated March 5, 2007, the Board granted the Utilities Consumers' Group's (UCG) request for a second round of Information Requests (IRs) pertaining to the Macquarrie Bank Financing (MBF). The Board directed that IRs were to be submitted to YEC by March 7, 2007, and responses were to be received from YEC by March 9, 2007;

- G. On March 12, 2007, the Board received a Notice of Motion from UCG listing responses to its IRs that UCG deemed as deficient. UCG requested the Board direct YEC 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";
- H. On March 15, 2007, the Board received a Notice of Motion from Mr. P.W. Percival listing Information Responses that Mr. Percival identified as deficient responses to some of his IRs. Mr. Percival requested that the Board direct YEC to provide the information requested in his correspondence of that date;
- I. YEC provided further clarification through its submissions of March 13, 2007; March 19, 2007, and March 20, 2007, and UCG provided further submissions on March 20, 2007, and March 21, 2007.
- J. The Board has reviewed the submissions and made a determination on the requests by UCG and Mr. Percival.

NOW THEREFORE the Board orders as follows:

- 1. In response to UCG-YEC-2-6 and UCG-YEC-2-10, YEC is directed to produce working electronic copies of its cost-of-service and rate design models and calculations. YEC is directed to provide this information by March 28, 2007.
- 2. The following schedule applies to the remainder of the PPA proceeding:

Further IR Responses from YEC	March 28, 2007
Argument	April 4, 2007
Reply	April 10, 2007, by 1:00 p.m.

DATED at the City of Whitehorse, in the Yukon Territory, the 16th day of March, 2007.

BY ORDER

 Wendy Shanks
 Acting Chair

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and

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Reasons for Decision

1.0 UCG-YEC-2-13, UCG-YEC-2-24, UCG-YEC-3-30, UCG-YEC-3-20

In the above-noted IRs, UCG requested the following documents: the July 2006 Mine Feasibility Study; Macquarie Bank Ltd. and MRI Trading AG documents related to YEC Security; and the PLF Agreement and SF Agreement. YEC did not provide these on the basis that the Mine Feasibility Study is confidential, and that there is a confidentiality agreement in place with respect to the other documents. In UCG's March 21, 2007, response, UCG correctly pointed out that the Board does have the power to require production of confidential documents that are in YEC's possession, subject to measures to protect the confidentiality of such material.

The Board is of the view that there are two questions to be asked in making a determination on the UCG Motion. First, if the information is available, is the information requested of sufficient importance to the Board that it should consider requiring disclosure of the information? Second, if the information requested is relevant and of sufficient importance, should the Board require disclosure of these documents? If the Board decides the information should be disclosed, then the Board must consider the form of disclosure.

With respect to the Maquarie Bank and MRI documents and the PLF and SF Agreements, YEC has stated that these are third-party documents and YEC has no legal capacity to release that information. As these parties are not party to the proceeding before the Board, the Board considers that compelling disclosure of this information would be an unusual step. The Board has considered the information requested and is not satisfied that it is of sufficient importance for the Board to consider invoking its powers to compel production of these documents from third parties. UCG notes that the confidentiality agreements have not been filed with the YUB. The Board accepts YEC's submission that confidentiality agreements are in place and does not require further proof of this. While YEC has indicated it conducted its due diligence, the Board reminds YEC that the burden of proof for this proceeding rests with YEC.

With respect to the July 2006 Mine Feasibility Study, YEC has stated this is confidential. UCG submitted in its response that "the Board and interested parties should be allowed to review the details of the study and make arguments regarding its specific determinations". The Board is of the view that a detailed examination of the Mine Feasibility Study would not be of significant assistance to the Board. Further, the Board notes that YEC, in its response, provided a link to the filings of Sherwood Copper with

the Canadian Securities Administrators. The Board is satisfied with the information that has been provided by YEC and does not require further responses.

1.1 YUB-YEC-1-29

UCG requested a further response to one of the Board's IRs. Section 13(3) of the Board's Rules of Practice states:

13(3) Where the party requesting the information is unsatisfied with the response or with the reasons for a response not being provided, that party may apply to the Board for an order settling the response.

The Board is of the view that it is not open to UCG to request a further response to one of the Board's IRs. The Board is satisfied with the response.

1.2 UCG-YEC-2-4

In this IR, UCG requested information relating to the bidding process for the Carmacks-Stewart transmission line project. YEC submitted that the information requested is not relevant to the issues in the PPA proceeding. The Board agrees with YEC that this information is not required for this proceeding; however, the Board does consider these issues are likely relevant to the Part 3 review to be directed by the Government of Yukon.

1.3 UCG-YEC-2-6 and UCG-YEC-2-10

In these IRs, YEC was requested, among others things, to provide working electronic copies of its cost-of-service study. Notwithstanding YEC's response that it has provided all relevant information to the extent available, the Board considers that working electronic copies of the cost-of-service study and rate design models and calculations would be helpful to the Board.

YEC is to provide working electronic copies of the cost-of-service study and rate design models and calculations by March 28, 2007.

1.4 UCG-YEC-2-28, UCG-YEC-3-1, UCG-YEC-3-2, UCG-YEC-3-17 and UCG-YEC-3-18

The Board has reviewed these IRs, UCG's submissions and YEC's responses. Based on the initial responses together with the additional responses provided by YEC in its March 13, 2007 letter, the Board is satisfied that the responses are adequate and that directing further information would not be of assistance to the Board.

1.5 UCG-YEC-3-10, UCG-YEC-3-11 and UCG-YEC-3-14

UCG submitted that in answering these IRs, YEC has "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". In response, YEC submitted that it has fully responded to these IRs and that any costs arising will be insignificant and will have no material impact on the type of assignment reference by UCG.

The Board accepts YEC's submission that the amounts are immaterial and will not direct any further responses.

1.6 PWP-YEC-1-9, PWP-YEC-1-10 and PWP-YEC-1-27

The Board has reviewed the information requested by Mr. Percival in these IRs, YEC's responses and the further information provided by YEC in its March 20, 2007, letter. The Board is not prepared to direct YEC to provide any further information in this proceeding, as it questions the relevance of this information; however, the Board does consider that this information is likely relevant to the Part 3 review to be directed by the Government of Yukon.

1.7 Other Matters

The Board notes that on March 19, 2007, UCG sent in a letter attaching two Orders-in-Council (OICs) from the Yukon Government, one of which designates the Carmacks-Stewart transmission line project as a regulated project for the purpose of Part 3 of the *Public Utilities Act*. In the letter, UCG requests the Board suspend the PPA proceeding while YEC prepares and submits applications pursuant to the OICs. The Board notes that UCG distributed these OICs and made this request prior to the Board receiving these OICs along with instructions from the Minister of Justice. The Board has now considered the March 20, 2007, letter from the Minister of Justice (received March 21, 2007) and is not prepared to grant UCG's request.

The Board also notes that in the process dealing with the UCG Motion, UCG submitted a lengthy response. In reviewing this response, the Board found this to be largely argument, rather than being confined to a response to YEC's submissions on the UCG Motion.