

UTILITIES CONSUMERS' GROUP
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December 15, 2010

Yukon Utilities Board
Box 31728
Whitehorse, Yukon
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Attention: Deana Lemke, Executive Secretary

**Re: Yukon Energy Corporation Application to Approve
Alexco Resource Corporation Power Purchase Agreement**

Dear Deana:

Please find enclosed the reply argument submitted by the Utilities Consumers' Group.

Yours truly,

Roger Rondeau
President, Utilities Consumers' Group

YUKON UTILITIES BOARD

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

and

IN THE MATTER OF an application by Yukon Energy Corporation
for approval of a proposed power purchase agreement with Alexco
Resource Corporation

REPLY ARGUMENT OF

UTILITIES CONSUMERS' GROUP

December 15, 2010

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Introduction and Overview

The Utilities Consumers' Group

1. The Utilities Consumers' Group ("UCG") filed its Final Argument on November 5, 2010 with respect to the Application by Yukon Energy Corporation ("YEC") for approval of a Power Purchase Agreement with Alexco Resource Corporation ("Alexco"). Final arguments were also submitted by YEC and Leading Edge Projects Inc.
2. UCG has restricted its reply argument to respond to the argument of YEC. UCG has organized its reply argument by significant issue to assist the Board's deliberations.

Summary of UCG's Position

3. The general purpose of the review and hearing into the proposed Alexco PPA is to identify potential benefits, costs, risks and customer impacts and then weigh these findings to determine whether the proposed Alexco PPA should proceed as proposed by YEC. UCG submits that the proposed PPA is up for approval or denial rather than specific components of the contract.

Scope of Application

4. In its argument, YEC refers to the "limited scope" of the approvals they have requested from the Board¹. UCG argues that the Board's legislated responsibility includes the jurisdiction to approve the proposed PPA in its entirety rather than just those parts to which YEC feels the Board should limit its approval. While YEC's application was limited, UCG argues that the Board should make its decision regarding the PPA based on the definition of "rate" in the *Public Utilities Act* which includes a "contract of a public utility relating to a rate". The *Public Utilities Act* does not limit what part of the contract the Board has the responsibility to approve nor does the Rate Policy Directive (OIC 1995/90) restrict the Board's responsibilities when it states that normal rate setting principles must apply in that the Board must "review and approve rates in accordance with principles established in Canada for utilities, including those principles established by regulatory authorities of the Government of Canada or of a province regulating hydro and non-hydro electric utilities"².
5. UCG is not aware of any other jurisdiction that does not ensure that the regulator approves (either as part of a cost of service application or in a separate application) the complete power purchase contracts between a utility and a major customer and its impacts in order to ensure that all other ratepayers are protected by all conditions within the contract. UCG is also not aware of any regulator that would limit the scope of its review and decisions based on the specific approvals requested by a utility.
6. While YEC's requested approvals are "limited", UCG submits that the Board's decision on the application must be comprehensive and reflect a fact-based decision on the PPA as a contract.

¹ YEC Final Argument page 2

² OIC 1995/90, section 3.

UCG submits that, while the circumstances surrounding individual industrial customers will always be different, the Board should ensure that the entire contract and its impact are reviewed and either approved or not approved based on the evidence and analysis provided.

7. UCG submits that the Alexco PPA is a contract proposal. As such, any or all of the clauses of this proposal can be denied by the Board until it relieves its responsibility of ensuring this proposal is in the best interests of all other Yukon ratepayers.
8. While YEC argues that the Minto PPA “was used as a template for the Alexco PPA”³, UCG submits that the Alexco PPA is just as critical as the Minto PPA and any decisions made by the Board with respect to the Alexco PPA must endeavour to reflect the same level of comfort to all firm ratepayers while at the same time sets precedents for future industrial customers securing service from YEC.

Ratepayer Risks

9. In its argument, YEC refers to how the “Alexco PPA is considerably simplified because of the different circumstances surrounding the negotiation of the respective Agreements, and the uniqueness of the provision of service to each of the Mines”⁴. UCG submits that this illustrates why the Board is relied upon to conduct a comprehensive review of the Alexco PPA to ensure that additional risk is not being put on other ratepayers.
10. YEC argues that security and take-or-pay arrangements were not required or included in the Alexco PPA because of the lack of a loan⁵. UCG submits that the transient nature of mines in the Yukon will always place a risk on other ratepayers lose benefits or to make up the difference in revenues to YEC should a mine shut down for any length of time due to market forces or operational efficiency. UCG submits that security and take-or-pay provisions are the safety net required to protect ratepayers from the operational variances of mines.
11. While YEC did not base its proposed PPA with Alexco on any business plan, the risks facing Alexco and their potential impacts on rates for customers include, but are not limited to, the risks arising from:
 - changes to general economic, market, or financial conditions; and
 - load forecasts, both industrial and residential, not being realized.
12. In its argument, YEC claims that “ratepayer risks are significantly mitigated by this PPA approach”⁶. UCG submits that there remains enough unanswered questions for the Board to reject this assumption for the Alexco PPA:
 - no take-or-pay provision protecting other ratepayers from premature or unforeseen shut downs of the mine;

³ YEC Final Argument, page 2

⁴ YEC Final Argument, page 2

⁵ YEC Final Argument, page 2

⁶ YEC Final Argument, page 2

- no analysis of what load is the major driver and thus responsible for the costs of diesel generation on the margin;
- no analysis of what load is the major driver and thus responsible for costs of the grid transmission line extension and sub-stations (Note: UCG is not suggesting that Alexco pay for all of these infrastructure capital costs, only their fair share, similar to Minto);
- no analysis of who becomes responsible for costs of Aishihik 3 and Mayo B as Alexco and perhaps other mines in that area ramp up energy needs; and
- no analysis of the full impact of the proposal to change the current provision that ensures that all points of delivery are charged under the present ESRs and rate schedules.

Fixed Charge

13. While YEC argues that it relied upon a 1985 NEB report to determine “85% allocation of line fixed costs” as the fixed charge for Alexco⁷, UCG submits that YEC has not provided enough analysis to allow the Board to ensure that “rates charged to major industrial power customers, whether pursuant to contracts or otherwise, are sufficient to recover the costs of service to that customer class; those costs must be determined by treating the whole Yukon as a single rate zone and the rates charged by both utilities must be the same”⁸.
14. UCG submits that the fixed cost recovery proposal is not sufficient to recover a fair share from Alexco given that Alexco uses 98% of the energy and is responsible for 100% of the decommissioning costs and the PPA-related cost.
15. UCG submits that each Alexco point of delivery should be charged its proportionate share of the fixed and other infrastructure costs to be recovered from Alexco (i.e., transmission line and substations, Aishihik 3 and Mayo B) as so determined by the Board.

Capital Cost Contribution

16. YEC argues that “industrial customers are required today to make contributions towards new transmission infrastructure built specifically to provide industrial service to their mine site”⁹. UCG questions where the reference to “specifically” has been formally accepted by the Board. UCG submits that the onus is on YEC to provide evidence that ensures all ratepayers are paying their fair share of all the costs, including the capital costs. UCG submits that the proposed Alexco PPA does not go far enough to ensure that there will be no negative impacts to all other Yukon ratepayers.
17. UCG submits that Alexco should be directed to pay the costs associated with any operating and maintenance expenses associated with facilities used to supply them with electricity including spur lines, sub stations, transformers and various connecting point mechanisms. YEC may believe that these costs are trivial but they can add up for the average ratepayer. UCG also submits that any costs related to extra consultant and in-house work to develop the proposed PPA and the regulatory costs associated with this review process should be recovered in rates and charges to Alexco.

⁷ YEC Final Argument, page 3

⁸ OIC 1995/90

⁹ YEC Final Argument, page 4

18. UCG submits that the proposed Alexco energy usage is forecast to cause the necessity to burn base load diesel on the Mayo/Dawson grid. All of these costs should also be recovered in rates and charges to Alexco.
19. UCG submits that new, larger customers become the major drivers of major line extensions and the need for new energy output. YEC has not provided any evidence or argument that the construction of these projects is not the result of new industrial activity.

Other Issues

20. YEC argues that it is seeking approval of the Board for the totalized metering provision of the proposed PPA in the event that the YUB chose not to approve, or delays approval of, Section 7.7 of the proposed Terms and Conditions¹⁰. UCG submits that the proposed totalized metering should not be allowed as it is not allowed under the present ESRs. UCG submits that each point of delivery should be charged according to the proper rate schedule.
21. UCG submits that the onus on YEC and Alexco to prove to the Board they are using enough monthly power at each point of delivery to comply with the requirements of Rate Schedule 39 and the associated OIC 2007/94. UCG submits that any month in which the electricity used at any delivery point is below the requirements of Rate Schedule 39, Alexco should be required to pay the rates established for commercial general service customers.
22. YEC argues that “Alexco would not be responsible to reimburse other customers in this rate class for any difference in rate revenues that result from totalized metering vs. individual bills”¹¹. UCG submits that any efforts undertaken by YEC to change its operating procedures to save on costs should be to the benefit of all ratepayers. UCG argues that, similar to diesel costs avoided by installing additional hydro generation and transmission, the savings resulting from metering and / or customer service practices should be to the benefit of all.
23. YEC argues that the Firm Mine Rate (Rate Schedule 39) as approved by the Board includes some seasonal rate elements, namely the winter demand ratchet and the winter contract load provisions - however, no provision is made in this rate for seasonal energy rates.¹²
24. As required pursuant to Schedule A to OIC 2007/94 which established Rate Schedule 39, YEC has a commitment to provide the YUB with a letter annually to explain and identify any required adjustment to industrial demand and energy rates. To date, UCG has not seen any significant documentation related to reviews conducted on rate adjustments for 2010 and 2011 and what impact these rate adjustments would have on revenues collected by YEC and the revenues required to be recovered from other ratepayers.

¹⁰ YEC Final Argument, page 5

¹¹ YEC Final Argument, Pages 5-6

¹² YEC Final Argument, page 6

25. UCG submits that the lack of transparency by YEC in the legislated accounting for annual rate adjustments is something the Board should address as part of this proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15th DAY OF DECEMBER, 2010