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***DELIVERED BY E-MAIL***

Ms. Wendy Shanks, Vice-Chair  
Yukon Utilities Board  
P.O. Box 31728  
Whitehorse, YT Y1A 6L3

Dear Ms. Shanks:

***Re: Yukon Energy Corporation 20 Year Resource Plan – Reply Argument re: Power Purchase Agreement (“PPA”) between Yukon Energy Corporation (“YEC”) and Minto Explorations Ltd. (“Minto”)***

The Board’s letter of December 27, 2006 indicated its intent to consider, in its current deliberations on YEC’s Resource Plan (and particularly with regard to the proposed Carmacks-Stewart Transmission Project (the “CS Project”)), the YEC correspondence of December 21, 2006 informing the Board that YEC and Minto have reached agreement on the key terms to be included in the PPA as outlined in the December 21, 2006 Term Sheet for the PPA (the “Term Sheet”) attached to YEC’s letter.

In response to the Board’s letter, and the subsequent submissions filed by intervenors on January 4, 2007 with regard to YEC’s December 21<sup>st</sup> correspondence, this letter provides Yukon Energy’s reply.

**Term Sheet filed with the YUB as information as soon as it was finalized**

Two intervenors provided comments as to the timing of YEC’s December 21<sup>st</sup> filing with the Board. The Utilities Consumers’ Group (UCG) noted that “the late submission” was provided after all arguments had been submitted on the Resource Plan (i.e., no opportunity for information requests or cross examination), and that the timing during the holiday season of the Board’s request for comment also restricted ability for examination. Peter Percival (Percival) stated that the Board has failed to provide sufficient time for intervenors to submit meaningful comment, and that the timing of YEC’s filing is “highly suspect”.

In reply, Yukon Energy emphasizes at the outset that the Term Sheet was not filed with the Board as part of the Resource Plan review process. The Term Sheet was filed with the Board as a

courtesy to inform the Board of material progress on the PPA and to notify the Board that YEC will be bringing forward an application to approve the PPA by the end of January.

During the Resource Plan hearing YEC underlined the importance of the PPA with Minto as a precondition for the CS Project to proceed, committed to file the PPA with the Board as soon as it was concluded, and consistently stated that timing would be critical for all regulatory reviews and approvals to enable construction to start by fall of 2007. Filing the Term Sheet with the Board as information was fully consistent with these commitments and concerns.

As to the specific timing, the Term Sheet was made public by both YEC and Sherwood, and concurrently filed with the Board by YEC, the same day that it was concluded. Extensive negotiations had been ongoing since the conclusion of the hearing, as the Parties are acutely aware of the tight timing needed for essential Stage One CS Project approvals. YEC and Sherwood supported the Term Sheet being made public as a courtesy to all regulatory authorities and interested parties, demonstrating transparency and disclosure at a key milestone in the negotiation phase and ensuring immediate public disclosure under securities legislation applicable to Sherwood.

#### **Term Sheet is not a final PPA and was not provided as an application for YUB review**

Two intervenors provided comments suggesting confusion between the Term Sheet and the final PPA. The Yukon Conservation Society (YCS) treated the Term Sheet as though it is the PPA, seeking new hearings to examine it in detail. While noting that this is not a final PPA, Percival expressed “deep concerns” (paragraph 10) that “YEC and/or possibly the Mine are manoeuvring [sic] the Board, the Minister and the Yukon Government into positions from which they will be unable to make fair and reasonable determinations on the appropriateness of a finalized PPA. By the Board’s further consideration of this proposed PPA Term Sheet at this time, YEC may take such consideration as tentative approval and finalize a PPA.”

The Term Sheet is not a final PPA, and the December 21<sup>st</sup> letter to the Board was not filed as an application for review by the Board. This point was clearly set out in that letter, and is acknowledged in the Board’s letter of December 27<sup>th</sup> which noted that a “a formal agreement has not yet been finalized”. The UCG submission specifically recognized this point (paragraph 3), as did the YECL letter of January 3<sup>rd</sup> (which stated that they “look forward to participating in the Board’s regulatory process that will deal with Yukon Energy’s upcoming application to have various new rates approved”).

As for the concerns raised by Percival, these concerns are devoid of merit. As the record shows, YEC did not file the Term Sheet for “consideration” of the Board at this time. Application to the Board for review and approval will only occur when a final PPA is concluded. Furthermore, the

information in the Term Sheet which outlines the conditions needed to proceed with the PPA (and the CS Project) is entirely consistent with YEC's evidence during the Resource Plan review hearing.

**PPA must be approved by the YUB before it is effective and timing of approval is critical**

Although there are numerous issues raised by the intervenors relating to the terms and conditions contemplated for the PPA, all five intervenor submissions argue for YUB review of the PPA at a separate hearing. UCG also seeks a precondition that the YUB approve the CS Project itself as well as the PPA.

It is important to emphasize that the PPA will not go ahead (and the Carmacks-Stewart project will not proceed) without the YUB approving the terms and conditions outlined in the PPA. Yukon Energy would expect and would fully support a public process to review Yukon Energy's application which allows all interested stakeholders to fully take part. However, as was repeatedly indicated during the Resource Plan review process, timing is extremely tight. As noted in the Term Sheet and YEC's December 21<sup>st</sup> letter, in order to complete the Transmission Project to supply Minto prior to the end of 2008, YUB approval of the PPA is needed on or before April 30, 2007. Accordingly, to provide the YUB with sufficient time to review the PPA, YEC and Minto have agreed to finalize the PPA (and YEC will bring an application for approval of the PPA) as soon as feasible prior to the end of January 2007.

In reply to UCG, and as was reviewed thoroughly in the Resource Plan hearing, there is no legislative basis today for the YUB to "approve the project itself".<sup>1</sup> The relevant Minister,

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<sup>1</sup> For example, and specifically in relation to Part 3, it is important to note that the YUB does not have the specific jurisdiction to approve any project. Further, in relation to the issues raised by Percival relating to Part 3, Percival (paragraph 5) questions why YEC refers to the transmission facilities needed under the PPA to connect the Minto mine as a "Transmission Project", rather than as an "Energy Project" (Percival suggests YEC is "setting the stage, as it did for the previous Mayo to Dawson line, so that it can argue that this is not an Energy Project and therefore does not require review under Part 3 of the Act"). YEC's short reply is simply because the transmission facilities needed to connect the mine to the WAF grid (as well as the entire CS Project) are "power transmission facilities" and not power generation facilities, and YEC has consistently used these terms to describe these projects throughout its 20-Year Plan and the Resource Plan hearing process. The issue as to what is eligible under the Act to be declared, by OIC, an "Energy Project" that then "requires" YUB review and Ministerial approval as so provided in Part 3 of the Act is an entirely separate matter, the outcome of which will not be affected by terms adopted by YEC or the PPA. As noted in Exhibit C3-13, paragraph 32, Yukon Development Corporation did advise the Minister with regard to the Mayo Dawson Transmission Project that "a transmission line did not qualify as an energy project as defined in the legislation". Percival (paragraph 6) suggests that inclusion of the diesel units in the PPA, plus possible use of the proposed PPA deferral account to fund some Aishihik 3<sup>rd</sup> Turbine capital costs, may somehow modify the eligibility of the CS Project or the Transmission Project as an "Energy Project" under the Act - which suggestions, relate solely to the PPA and not any "project", have no merit. In addition, YEC has previously set out in the Resource Plan hearing process its concerns relating to substantive risks affecting timing if a further review had to be undertaken under Part 3,

however, will have to approve the CS Project before YEC can proceed with construction. (OIC 1993/108 – YEC Final Argument, footnote 4)

### **Relevant issues raised by Intervenors will be canvassed in YUB approval process for PPA**

Four intervenor submissions raised issues relating to specific terms and conditions to be included in the PPA including issues relating to rates (firm and secondary), and the adequacy of the security and payment schedules for the Mine’s contribution to the CS line (and the Mine Spur).

In reply, Yukon Energy notes that the PPA hearing (and not the Resource Plan review) is the appropriate forum to address specific PPA terms and conditions. YEC fully expects that all relevant issues will be properly canvassed during that review so that the YUB and interested parties can be satisfied that the PPA is in the public interest. More specifically YEC understands:

- the rates agreed to in the PPA must not only be just and reasonable, they will have to meet the principles outlined for major industrial customers in OIC 1995/90; and
- the YUB will have to be satisfied that the security and payment schedules are reasonable given the benefits the PPA provides to ratepayers.

### **History demonstrates that Mine development has been beneficial for Yukon ratepayers**

Intervenor submissions raised general concerns, noted during the Resource Plan hearing, about risks related to serving major mine customers and developing major new transmission projects.

In reply, Yukon Energy re-iterates the evidence reviewed during the Resource Plan hearing, i.e., many of the key hydroelectric generation (and related major transmission) assets in Yukon today, which provide Yukon ratepayers with lower rates than those charged in other northern Canada and US areas, are only in place because of past mine development.

### **How the Term Sheet confirms, clarifies or modifies evidence at the hearing**

In conclusion, given that the Board has decided the Term Sheet “to be relevant in considering the proposed Carmacks-Stewart transmission line in the Resource Plan”, YEC would highlight the following key points in the Term Sheet which confirm, clarify and/or modify YEC evidence and submissions during the Resource Plan hearing;

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also emphasizing that nothing appears to be gained by such an added process given YUB review of the CS Project (as a major near term project with more than \$3 million costs) under the Resource Plan. This is especially so when the PPA will be reviewed by the YUB and further because the CS Project must be approved by the relevant Minister before it can proceed.

- **PPA filing with the Board** – This commitment made by YEC in the hearing has been confirmed. YEC will file by the end of January an application for YUB approval of the PPA. In that application, YEC will make clear the timing requirements that must be met and the specific terms that need to be addressed before YEC will proceed with the commitments to build the Transmission Project for serving Minto.
- **Firm rates for Minto to be approved by YUB in accordance with OIC 1995/90** – This basic requirement as reviewed in the Resource Plan hearing has been confirmed. In relation to the rate to serve the Minto mine the information provided in the Resource Plan hearing has been modified by proposing a more specific rate for 2008 of approximately 10 cents per kW.h, as compared to the 9.3 cent average rate assumed in Exhibit B-16.
- **No adverse impact on other ratepayers from PPA or CS Project** – This YEC commitment has been confirmed, and is now also fully supported by Minto through the following specific measures in the Term Sheet:
  - **Minto Customer Contributions** –The Minto contributions will cover the actual capital costs for the Mine Spur and a “material contribution” to the CS Project capital costs (\$7.2 million).
  - **Minimum take-or-pay power purchase provisions** – Under the Term Sheet Minto has now agreed to a minimum take-or-pay power purchase of \$24 million within the first 8 years. This new element provides added protection to ratepayers that was not discussed in the Resource Plan hearing.
  - **Minto Security provided to YEC** – Under the Term Sheet Minto will provide security with respect to its customer contribution and its take or pay commitments. In this regard Yukon Energy is undertaking a full due diligence review, the results of which, subject to appropriate confidentiality conditions, will be made available to the YUB as part of Yukon Energy’s PPA application. This will include a detailed review of the Minto bank’s security package as well of the forward sales contracts (for copper concentrate sales), and assessment of the feasibility study undertaken by Minto.
  - **Retention and use of Mine Power Purchase Net Revenue** - This new element under the Term Sheet provides added protection to ratepayers that was not discussed in the Resource Plan hearing. YEC will establish a deferral account whereby net revenues earned by YEC from sales to Minto (this does not include Minto customer contribution payments noted above) will be set aside to protect ratepayers against certain future cost risks while also being used to offset

remaining CS Project capital costs and potentially also capital costs due to accelerated hydro generation if related to the Minto mine. (Nothing in this arrangement inhibits Aishihik 3<sup>rd</sup> Turbine development in any way, contrary to concerns expressed by YCS.)

- **Provisions for Minto funding of Decommissioning costs** – The Term Sheet elaborates on specific key terms for Minto funding of decommissioning costs for Mine Spur segments required after the Minto mine permanently shuts down.
- **Mine Diesels** –YEC discussed in its evidence the potential option of purchasing four high speed diesel units (6.4 MW) from Minto at the mine site. The Term Sheet provides new information on the key terms agreed between the Parties. As the City of Whitehorse (“COW”) submission notes, evidence provided in the Resource Plan hearing reviewed potential benefits of mine site diesel generation at times when mine loads require use of diesel generation (e.g., reduced line losses, cost savings due to reduced diesel generation requirements, less pollution and less greenhouse gas emissions); in addition, the Mine Diesels will be assessed by YEC as a low cost near term option to secure overall WAF winter peak capacity generation requirements. Further, these units are portable and are capable of being redeployed anywhere on either the WAF or Mayo Dawson grids.
- **New rate options** – The Term Sheet provides for YUB review and approval two new rate options not discussed during the Resource Plan hearing, namely a Low Grade Ore Secondary Energy Rate option (which will be interruptible, only available from surplus hydroelectricity supplies, and only useable for processing low grade copper ore that otherwise was being stockpiled based on current Minto mine plans) and a Peak Shaving Rate option (which provides a specified credit on the firm demand billing rate tied to limits on the mine’s ability to affect peak winter loads on the WAF system).
- **Substantial reduction in diesel generation air emissions** – The Resource Plan hearing evidence clearly demonstrated that, without the CS Project, the Minto mine’s diesel generation air emissions (including greenhouse gas emissions) would be well in excess of all YEC and YECL diesel generation emissions today in Yukon. The Term Sheet confirms the CS Project Stage One development will displace substantial Minto diesel generation with surplus hydroelectric generation.

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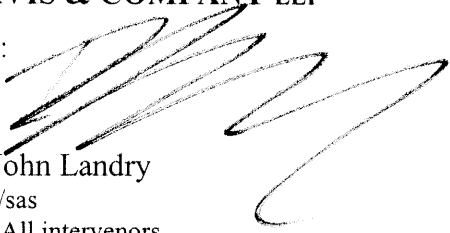
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All of which is respectfully submitted.

Yours truly,

**DAVIS & COMPANY LLP**

Per:

  
P. John Landry  
PJL/sas  
cc: All intervenors

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