

**THE PUBLIC UTILITIES BOARD
OF THE
NORTHWEST TERRITORIES**

DECISION 4-2008

January 30, 2008

IN THE MATTER OF the Public Utilities Act, being Chapter 110 of the Revised Statutes of the Northwest Territories, 1988(Supp.), as amended.

AND IN THE MATTER OF an application by the Northwest Territories Power Corporation to review and vary Board Decision 13-2007.

THE PUBLIC UTILITIES BOARD

BOARD MEMBERS

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Raj Retnanandan	Board Consultant
John Donihee	Board Counsel

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1. BACKGROUND & APPLICATION

On August 29, 2007, the Northwest Territories Public Utilities Board (“**the Board**”) issued Board Decision 13-2005 with respect to the Northwest Territories Power Corporation’s (“**NTPC**”) 2006/07 and 2007/08 Phase 1 General Rate Application. In this Decision, the Board issued the following directions to the NTPC with respect to the forecast of brushing expenses:

- The Board directs NTPC, in its Phase 1 refiling, to calculate its total 06/07 and 07/08 supplies and services expenses using its forecast brushing expenditures of \$393,000 for 06/07 and \$401,000 for 07/08. [Directive 14]
- The Board directs NTPC, in its Phase 1 refiling, to propose a procedure for returning to the ratepayers over a 3-year period the \$345,000 that was over-collected by the Corporation for brushing over the 01/02 to 05/06 period. To be clear, the refunded \$345,000 is to be obtained from NTPC’s non-regulated cash flow, not by reducing the test year brushing expenditures. [Directive 15]
- The Board directs NTPC that, commencing with the 06/07 test year, NTPC’s 3-year rolling average actual brushing expenditures must be no less than 10% below the 3-year rolling average forecast brushing expenditures. NTPC’s 5-year rolling average actual brushing expenditures must be no less than equal to the 5-year rolling average forecast brushing expenditures. [Directive 45]

The NTPC, by letter dated November 5, 2007 applied for Review and Variance (“**R&V**”) of Board Decision 13-2007 (“**R&V Application**”). The NTPC stated it was seeking to review and vary Directives 15 and 45 only. The NTPC was not seeking any review of Directive 14.

Specifically, NTPC’s R&V Application requested a review and variance of Board Decision 13-2007 based on the following grounds:

1. having previously approved a total revenue requirement for NTPC in Decision 1-2002 on a forward test year basis, the Board erred in law, jurisdiction and fact by (i) determining that “NTPC has either 1) under-spent \$345,000 from 01/02 to 05/06 or 2) over-collected \$345,000 in 01/02 to 05/06” and (ii) directing NTPC to “...propose a procedure for returning to the ratepayers over a 3-year period the \$345,000 that was over-collected by the Corporation for brushing over the 01/02 to 05/06 period” (“Directive No. 15”);
2. having approved a total revenue requirement for NTPC in Decision 13-2007 on a forward test year basis, the Board erred in law and jurisdiction by directing that “...commencing with the 06/07 test year, NTPC’s 3-year rolling average actual brushing expenditures must be no less than 10% below the 3-year rolling average forecast brushing expenditures. NTPC’s 5-year rolling average actual brushing expenditures must be no less than equal to the 5-year rolling average forecast brushing expenditures” (“Directive No. 45”); and
3. having accepted and considered the Application on a forward test year basis, the Board erred in law by failing to give the Corporation notice that the Board was considering Directive Nos. 15 and 45.

The NTPC provided the Board with supporting arguments for each of the above grounds in its R&V Application. Based on its submissions, the NTPC requested the Board to:

1. Review Directive Nos. 15 and 45 of the Decision; and
2. Vary the Decision by vacating Directive Nos. 15 and 45.
3. Alternatively, in respect of Directive No. 45 only, the Board could vary it to direct the Corporation to establish a brushing deferral account for 2007/08 expenses onward.

By letter dated November 8, 2007, the Board asked all interested parties the following two questions with respect to the NTPC’s R&V Application:

- In its review and variance application, has the NTPC met the threshold for the Board exercising its discretion to review Directives 15 and/or 45 of Decision 13-2007?
- If the Board decides to exercise its discretion to review Directives 15 and/or 45 of Decision 13-2007, should the Board include Directive 14 in that review?

The interveners were requested to provide their submissions by November 19, 2007 and NTPC had until November 23, 2007 to submit their response. The Hydro Communities (“**HC**”), and the Thermal Generation Communities (“**TGC**”) both provided submissions on Nov. 19th and the NTPC responded on Nov. 23rd.

By letter dated November 28, 2007, the Board advised all interested parties that after reviewing the NTPC’s R&V application and the subsequent submissions, the Board had decided that it would proceed with a review of Directives 14 and 15 but it would not review Directive 45. The Board also established a schedule for the review with argument due on December 7, 2007 and reply argument due on December 14, 2007

By letters dated December 7th, the HC and the NTPC filed their Argument and both also filed their Reply Argument, by letters dated December 14th.

The Board has considered the evidence filed relating to this brushing issue, both in the original proceeding and in this R&V process.

2. BOARD ANALYSIS AND DECISIONS

To proceed logically, the Board will first explain its analysis and decision on Directive 15 before moving on to Directives 14 and 45.

Directive 15

The Board has carefully considered the arguments presented by the applicant and all interested parties with respect to the issue regarding retroactive ratemaking. The Board finds that Directive 15 should be vacated as a matter of law.

However, the fact that Directive 15 is vacated does not bring the matter to an end. The Board has also carefully considered the evidence in the context of the review and variance application and continues to be concerned over the historical level of accuracy regarding the NTPC brushing expenses. As a result further adjustments are necessary in order to satisfy the Board that the overall result will yield an appropriate revenue requirement, just and reasonable rates and a reasonable expectation that the NTPC will earn its approved rate of return.

Having reviewed the evidence provided by the parties, the Board remains concerned with the NTPC's brushing expenses for the years 2001/02 and 2002/03. In the Board's view, the differences between what was budgeted for brushing in these two years (\$193,000 and \$196,000, respectively) and what was actually expended (\$18,000 and \$44,000, respectively) are too large to be considered normal business fluctuations that would account for reasonable deviations from what had been forecast.

The NTPC characterizes the reduced brushing expenses in 01/02 and 02/03 as "avoided" expenses. The Board does not accept this argument. This is not an

example of good business management avoiding an expense. The nature of brushing is such that in the ordinary course expenses not made in one year are merely delayed to a later year with the effect that the ratepayers may simply have to pay more later to catch up on the deferred work. In the Board's view, the return to brushing expenditure levels that, on average, approximated the forecasts for 03/04 to 05/06 also undermines any argument that the reduced expenditures in 01/02 and 02/03 were due to "efficiency gains" realized by the NTPC in the conduct of its brushing activities.

Contrary to the argument set out by the NTPC in its Nov. 23rd submission, the Board is of the view that the regulatory compact does include an expectation that, absent a compelling and significant reason, the utility will incur costs that are reasonably close to those forecast in a previous GRA. Board approval of the overall revenue requirement in a GRA does not provide the utility with free rein to adjust its expenditures however it wishes as long as it does not substantially exceed the approved revenue requirement or rate of return. For example, while the Board understands that actual expenditures on approved forecasts may vary as circumstances require, the Board does not consider the NTPC to have the wide discretion to completely cancel projects or forecast O&M activities on its own. This would amount to "self-regulation". This, as pointed out by the Alberta Energy and Utilities Board, may well constitute a violation of the regulatory compact.¹

In the Board's view where a direct and intentional violation of the regulatory compact can be determined, there is a need to remedy it. In appropriate cases this may result in the need to retroactively adjust a company's revenue requirement and the resulting rates.

¹ AltaLink D 20050019 at 8-10.

However, it is the view of the Board that it must first have a foundation in evidence, either direct or circumstantial, sufficient to enable it to conclude that there has been a violation of the regulatory compact. Violation of the regulatory compact could be the result of either intentional choice, recklessness, or of willful blindness in relation to the effect of the NTPC's level of brushing expenses on the ratepayer.

In this case, the Board's review of the evidence does not provide sufficient foundation to support a conclusion on the Board's part that there was an intentional violation of the regulatory compact on the NTPC's part. Absent an evidentiary basis, the Board cannot support the conclusion that the NTPC violated the regulatory compact in this case.

However, the NTPC needs to be fully aware that the Board remains concerned over the extremely large historical variance between actual and forecast brushing expenses. The Board has a responsibility to ensure that safe and reliable electrical service is provided and to protect the interests of the ratepayers. The Board can, and will, take action, even retroactive action, if the NTPC adjusts its budgets significantly from what was approved by the Board in a GRA such that safety or reliability was potentially compromised or the ratepayers ended up paying for services which they did not receive.

Directive 14

In Decision 13-2007, the Board concluded that it would accept the NTPC's forecasts for the two test years, 06/07 and 07/08, in light of the fact that there was no contrary evidence before the Board. However, that conclusion was premised upon the Board's original analysis leading to both Directives 14 and 15. In Decision 13-2007, the Board took the approach that it would deal with its concerns about the past 5 years through the ordering of the refund (Directive 15)

and that the Board and the NTPC would start fresh with the 06/07 test year (Directive 14). As such, the Board did not use the 5 years of actual expenses from 01/02 to 05/06 as evidence upon which to assess the NTPC forecasts for 06/07 and 07/08.

However, in light of the Board's decision in this Review and Variance process that it will vacate Directive 15, the Board finds it necessary to consider the impact of its decision to vacate Directive 15 in light of the clear evidence regarding the large discrepancies between actual and forecast brushing expenses. In the Board's view, this is a necessary and logical step to take in light of the evidence.

The Board notes that the NTPC has acknowledged the jurisdiction of the Board in this regard as stated at page 2 of its November 23, 2007 submission when it noted that the Board was correctly entitled to "review historical actual brushing expenses to assess the Corporation's forecast accuracy".

The Board has determined that it would be fair and appropriate for the Board to use the five years of actuals from 01/02 to 05/06 in assessing the NTPC's forecasts for 06/07 and 07/08.

The Board finds that despite having had two opportunities to do so (the original proceeding and the Review and Variance process), the NTPC has still not provided the Board with sufficient evidence to justify the significant variance in the historical brushing costs. The Board has concerns that the NTPC's current forecasts (which increase the brushing budget from less than \$200,000 to about \$400,000), may suffer from the same degree of forecast error as past historical costs, particularly given the two years (01/02 and 02/03) when the brushing expenditures were significantly below what had been forecast. Expecting Board approval of such significant increases in the 06/07 and 07/08 forecasts above the

past 5 years of actuals is upon closer examination not reasonable given the lack of supporting evidence for the increases combined with the lack of accuracy of the NTPC's past forecasts on brushing.

The Board notes that in its Dec. 14th submission, the NTPC suggests that, if the Board were to decide to use the actuals to set the 06/07 and 07/08 forecasts, only the last 3 years of actuals (03/04 to 05/06) should be used but the NTPC fails to explain why the years 01/02 and 02/03 should be excluded. Given the NTPC's assertions in this R&V process that nothing unreasonable or untoward occurred in these 2 years, the Board finds the NTPC's argument that these 2 years should be excluded is inconsistent with the NTPC's arguments on Directive 15.

The Board therefore finds the NTPC's 06/07 and 07/08 brushing forecasts are in need of adjustment based on the historical costs and has determined that the average of the last 5 years of actuals (01/02 to 05/06) should be the basis for the forecasts for the 06/07 and 07/08 test years, with a 2% increase from 06/07 to 07/08.

The Board has decided to vary Directive 14 of Decision 13-2007 as follows:

The Board directs the NTPC to calculate its total 06/07 and 07/08 supplies and services expenses using forecast brushing expenses of \$126,000 for 06/07 and \$129,000 for 07/08.

The effect of this variance of Directive 14 is to reduce the 06/07 and 07/08 revenue requirements, approved in Decision 19-2007, from \$76.906 million down to \$76.639 million for 06/07 and from \$81.389 million down to \$81.117 million for 07/08.

Further, the Board notes that this adjustment to the 06/07 and 07/08 brushing costs is consistent with Directive 45, which contemplated using a 5-year rolling average to assess brushing costs.

Given that the Board has already approved a rate adjustment (Decision 20-2007) for the Phase 1 GRA using the approved 06/07 and 07/08 revenue requirements in Decision 19-2007, the Board directs the NTPC to reflect the reduced revenue requirements of \$76.639 million for 06/07 and \$81.117 million for 07/08 when the NTPC applies to the Board for the 07/08 shortfall rider.

Directive 45

In its Nov. 28th letter decision, the Board established the scope of the Review and Variance process. The Board decided that it would not include Directive 45 in the R&V process and provided its reasons for refusing to do so.

However, in the course of evaluating the evidence and reaching its decisions to vacate Directive 15 and vary Directive 14, the Board has come to the conclusion that the need for Directive 45 has been greatly diminished. Notwithstanding its analysis in its Nov. 28th letter, and upon review of the evidence and argument associated with Directives 14 and 15, the Board has decided to vacate Directive 45. The Board will be in a position to review the NTPC brushing costs when the company comes forward for its next revenue requirement application. The Board expects the NTPC to fully explain any variance between forecasts and actual costs at that time.

3. BOARD ORDER

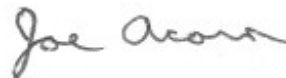
NOW, THEREFORE IT IS ORDERED THAT:

1. Directive 15 of Decision 13-2007 is vacated.
2. Directive 14 of Decision 13-2007 is varied to:

The Board directs the NTPC to calculate its total 06/07 and 07/08 supplies and services expenses using forecast brushing expenses of \$126,000 for 06/07 and \$129,000 for 07/08.

3. The NTPC is to reflect the reduced revenue requirements of \$76.639 million for 06/07 and \$81.117 million for 07/08 when the NTPC applies to the Board for the 07/08 shortfall rider.
4. Directive 45 of Decision 13-2007 is vacated.
5. Nothing in this Decision and Order shall bind, affect or prejudice the Board in its consideration of any other matter or question relating to the Northwest Territories Power Corporation.

**ON BEHALF OF THE
PUBLIC UTILITIES BOARD
OF THE NORTHWEST TERRITORIES**



**Joe Acorn
Chairman**

Dated January 30, 2008