

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

DECISION 6-2009

February 6, 2009

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 Northwest Territories Power Corporation seeking approval of a Code of Conduct filed in response to Board Directives 49 and 50 from Decision 13-2007.

THE PUBLIC UTILITIES BOARD

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1. BACKGROUND

By letter dated November 24, 2006, the Northwest Territories Power Corporation ("**NTPC, the Corporation**") submitted to the Northwest Territories Public Utilities Board ("**the Board**", "**PUB**") its Phase 1 General Rate Application ("**Phase 1 Application**") for the fiscal years April 1, 2006 to March 31, 2007 and April 1, 2007 to March 31, 2008.

The Board issued Decision 13-2007, dated August 29, 2007, addressing all matters arising from NTPC's Phase 1 Application. In this Decision, NTPC was requested to respond to a number of Board Directives.

The Board Directives 49 and 50 stated the following:

49. The Board directs NTPC, by the end of January 2008, to file with the Board a formalized inter-affiliate code of conduct which would establish principles related to pricing and other matters governing all transactions with the Corporation's parent, other affiliates and non-regulated operations.
50. The Board directs NTPC, by the end of November 2007, to file with the Board a detailed policy that explains how the interests of the regulated ratepayers will be protected in relation to decisions by the Board and Senior Management regarding the operations of NTPC and NTHC. In particular, the Board expects a detailed explanation as to how it will be decided which of the two companies will pursue new generation and sales opportunities and how the interests of the regulated ratepayers will be protected in that decision-making process.

By letter dated November 30, 2007, NTPC filed its response to Directive 50, pursuant to Board Decision 13-2007.

By letter dated January 31, 2008, NTPC filed its response to Directive 49, pursuant to Board Decision 13-2007.

In a letter dated July 11, 2008, the Board requested NTPC to inform the Board as to the expected date for filing of the Phase 2 General Rate Application (“**Phase 2 GRA**”). The decision whether to immediately move forward with the review of the responses to Directives 49 and 50 or to possibly combine the review with the Phase 2 GRA, was to be made after receipt of NTPC’s response to the aforementioned letter.

On August 15, 2008, NTPC filed its Phase 2 GRA for the fiscal year April 1, 2006 to March 31, 2007 and April 1, 2007 to March 31, 2008 to determine appropriate rates for its customers.

By letter dated August 19, 2008, the Board communicated its intent to combine the Phase 2 review with the review of NTPC’s inter-affiliate code of conduct and conflict of interest guidelines (Directives 49 and 50 of Decision 13-2007).

Following receipt of comments from all parties regarding the review process, the Board, by letter dated August 28, 2008, issued a process schedule and requested comments. The Board received submissions from HC, TGC and NTPC, all of whom expressed no concerns with the process or the schedule.

The Board issued Decision 26-2008 addressing all matters arising from NTPC’s Phase 2 GRA. The Board stated that it will issue a separate and subsequent decision on the NTPC’s proposed code of conduct and conflict of interest guidelines. In this Decision, the Board will deal with NTPC’s proposed code of conduct and conflict of interest guidelines.

2. THE APPLICATION

In response to Board Directive 50, NTPC filed the policy Guidelines for Regulated versus Non-regulated Business Activities (Policy A-3) on November 30, 2007 (Inter-Affiliate Policy). By letter dated January 31, 2008, NTPC filed its Code of Conduct for Affiliate Transactions in response to Directive No. 49 (the "NTPC Code of Conduct").

The preamble to the inter-affiliate policy states the Boards and management of the Northwest Territories Hydro Corporation ("**NT Hydro**") and NTPC will conduct business and make decisions based on the highest ethical and professional standards and minimize any potential for conflict of interest. In particular, the Boards and management shall conduct business and make decisions in a manner which considers and safeguards the interests of each corporation. Inter-affiliate activity and transactions shall be transparent and adhere to applicable inter-affiliate generally accepted accounting principles and NTPC's inter-affiliate code of conduct as approved by the PUB.

The proposed inter-affiliate policy states Section 4(3) of the *Northwest Territories Power Corporation Act* ("**NTPC Act**") provides that NT Hydro owns the common (voting) shares of NTPC making the NTPC a subsidiary of NT Hydro. Section 8(1) of the *Northwest Territories Hydro Corporation Act* ("**NT Hydro Act**") provides that the Board of Directors of NTPC is designated as the Board of Directors of the NT Hydro. Similarly, Section 13(1) of the *NT Hydro Act* designates the President of NTPC as the President of NT Hydro. Several others of NT Hydro's indirect subsidiaries share the same Board of Directors and have overlapping management as NT Hydro and NTPC.

The Inter-affiliate policy goes on to state the common directors and officers of the parent company (NT Hydro) and its subsidiaries (NTPC, NWT Energy Corporation (03) Ltd., Sahdae Energy Ltd. and others) must always be cognizant of, and act appropriately with respect to their fiduciary duties owed to each entity. Case law and best practices require, “[d]irectors, in each case, to act in the best interests of the relevant company. When making decisions for the subsidiary the directors must act in the best interests of the subsidiary. They must not set aside the subsidiary’s interests for the parent’s agenda”. The same best practices also apply to common officers. Section 76(1) of the *Public Utilities Act* (“**PUA**”) requires that “[a] public utility shall provide safe, adequate and proper service and keep and maintain its property and equipment so that the public utility can provide the service.” The *NTPC Act* and the *NT Hydro Act* establish the objects of NTPC and NT Hydro, respectively, to generate, transform, transmit, distribute, deliver, sell and supply electricity on a safe, economic, efficient and reliable basis.

The Inter-Affiliate policy states the combined requirements of the foregoing provisions impose a “quality of service” obligation on both NTPC and NT Hydro that must also be adhered to by the respective Boards of Directors and management. NTPC recognizes the Board may review and approve costs incurred by and charges for service levied by any public utility falling under its jurisdiction that is not otherwise declared to be exempt by Board order or excepted by statute.

The Inter-Affiliate policy notes other sources of requirements governing the Boards of Directors and management include the *Conflict of Interest Act*, the *Financial Administration Act*, the *Access to Information and Privacy Act* and the *Public Service Act*, as well as directions issued from time to time by the

Executive Council pursuant to Section 8(4) of the *NTPC Act* and Section 9(2) of the *NT Hydro Act*.

The Inter-Affiliate Policy states the following factors shall be considered by the Boards of Directors and management when determining what is in the best interests, in each case, of the parent and its subsidiaries, and what best meets its quality of service obligations, when determining which business activities should be undertaken by which entity:

1. Risk

Every business venture or activity contains an element of risk. Risk must be proactively identified and managed. Each corporate entity may have different risk tolerance. Generally, if a project/activity risk is high and the potential for downside to regulated rate payers significant, then the project/activity should be undertaken in a manner and by an entity that will not expose the regulated customers to a liability or cost should the project/activity be unsuccessful.

2. Legal Restrictions

If a corporate entity is legally restricted in legislation, its constating documents or any directions or policy guidelines that may from time to time be issued or established by the Government of the Northwest Territories (“**GNWT**”) Executive Council, from certain types of operations or business ventures (i.e. joint ventures or debt limits/guarantee restrictions), then the project would not be undertaken by that entity.

3. Confluence

Where a project will likely converge with operations that serve regulated ratepayers, then the project/activity may be undertaken by the entity serving

those ratepayers (i.e. the project would be ultimately required to serve regulated customers and it is being advanced or expanded as a result of that opportunity).

4. Divergence

Where a project/activity diverges from or is unrelated to current or foreseeable service to regulated ratepayers, then such project/activity would be a candidate to be undertaken by a corporate entity that does not serve regulated ratepayers.

5. Access

Where a corporate entity serving regulated ratepayers does not have access to a particular business opportunity but another corporate entity not serving regulated ratepayers does, then the project/activity would be undertaken by the entity that could access the opportunity. For example, federal funding contributions often have conditions that cannot be met by a Crown corporation or regulated entity. Similarly, a joint venture partner may not be willing to do business in a manner that results in regulation of it or its investment.

6. Leverage and Majority Position

In cases where a project/activity requires extensive third party equity, joint venture partners, or other forms of financing, such that the entity serving regulated ratepayers is not in a majority (control) position, then it may be necessary to pursue the project/activity through a corporate entity not serving regulated ratepayers.

7. Project Permit

In the event a project/activity is intended to be pursued by the entity serving regulated ratepayers, but a project permit is denied by the PUB, the project/activity may then be pursued by an entity not serving regulated ratepayers.

8. Transparency

In addition to the foregoing factors, the following principles will guide NT Hydro and its subsidiaries with respect to inter-affiliate transactions:

- i. All inter-affiliate transactions shall be fully transparent and compliant with NTPC's inter-affiliate code of conduct as approved by the PUB.
- ii. It is understood that NT Hydro and its subsidiaries shall have the right to manage their affairs but accept that the regulated operations must demonstrate to the satisfaction of the PUB that all inter-affiliate transactions involving regulated operations are prudent and compliant with NTPC's inter-affiliate code of conduct as approved by the PUB.

The NTPC Code filed January 31, 2008 incorporates the Inter-Affiliate policy referred to above and, in addition, deals with the code of conduct for affiliate transactions.

With regard to the code of conduct for affiliate transactions, NTPC states at the present time and for the foreseeable future, NTPC's affiliate transactions involve sharing of financial reporting, purchasing, IT support and senior management services with NTEC, NTEC(03) and Sahdae. The ability to share costs with affiliates presents an opportunity for the regulated customer that would not otherwise be present. If the provision of services to affiliates gives rise to incremental costs, all of those costs will be directly charged to the affiliate and/or NTPC will advise its affiliates to engage those services from other parties.

NTPC states in sharing services, NTPC will attempt to maximize the utilization of its utility resources and recover a component of the costs (on a cost recovery basis) to the benefit of ratepayers. NTPC states such shared services are appropriately allocated to the Corporation and its affiliates by direct charges or

overhead allocations. NTPC acknowledges the onus is on NTPC, the regulated utility, to provide evidence in support of the inter-affiliate transactions.

3. POSITIONS OF PARTIES

The Hydro Communities (“**HC**”) expressed concern respecting NTPC’s view that there would be little sharing of costs and benefits for common facilities at Twin Gorges between regulated and unregulated segments except for the airstrip camp and Nonacho dam costs. HC stated the construction of the original dam and spillway at Twin Gorges has created the opportunity for the installation of a second hydro unit at that site without creating a head pond or constructing a spillway to pass excess flows past the Twin Gorges site. Therefore, HC submitted, these major facilities should be considered as common facilities. HC noted the capital costs of the existing facility would also include costs for water licensing, land rights and surveys and communication systems, all of which should be considered as common costs.

HC noted regulated customers will continue to receive the benefit of the existing 18 MW capacity at Taltson but regulated customers will not have the right to the power generated using Deze Energy Corporation’s (“**DEC**”) substation and transmission line as well as the water rights that have been granted by the Crown. This raises the question as to who is entitled to the excess hydro energy available from the existing hydro unit or who is entitled to the water flows currently available to that unit. If the original unit is only operating at part load to supply the existing customers, is DEC entitled to all of the remaining unused water resources at no charge from NTPC? [HC Argument P16]

HC submitted the NTPC Code of Conduct appears to focus on ensuring that unregulated affiliates pay for any incremental costs incurred by the regulated company as a result of provision of services to affiliates. The HC submitted that the Board should direct NTPC to include in its Code of Conduct the express

statement that all services provided by NTPC to its unregulated affiliates, should be paid for at fair market value. Further, the Code should expressly state that costs for operation and maintenance of shared facilities including but not necessarily limited to those referred to above, and common costs including capital costs (again, including but not necessarily limited to those referred to above), should be fairly allocated between NTPC and its affiliates. Finally the Code should expressly state that the revenues so earned and the costs so allocated should be properly forecast and accounted for in setting the revenue requirement for NTPC. [HC Argument P17]

In response to the HC's comments, NTPC submitted that the regulated customers can benefit when the distributor of power is not also the generator as Northland Utilities (Yellowknife) Limited's ("**NUL YK**") customers do from NTPC's generation. NTPC indicated there are potential benefits as a result of the Taltson expansion project:

NTPC noted a successful expansion of Taltson will have the following benefits to NTPC and its customers:

- a) provide for significant financial assistance in the major upgrade to the Nonacho dam;
- b) provide a market for the current excess power at Taltson if NTPC can negotiate a contract with a purchaser (e.g. DEC, mine(s), etc.);
- c) provide for the increase in revenue from the operation and maintenance contract for the facility; and
- d) provide for an increase in revenues during the construction phase from the sale of power, land rental, etc

NTPC stated, in its negotiations with DEC, it will use market principles and not a cost allocation method in establishing price. Since there is no existing market the value will be established on negotiation with DEC.

NTPC stated DEC will not be able to generate power with NTPC's excess water as their facility will be operating at maximum

The Thermal Generation Communities ("**TGC**") submitted Policy A-3, which was incorporated in the Code of Conduct document, is an NTPC policy i.e. it has not formally or otherwise been adopted or approved by the parent, NT Hydro, or any of the other affiliates. This is an issue, as NTPC must follow the Code of Conduct, but there appears no compulsion on parent company or any of the affiliates to follow suit. If, as NTPC suggests NT Hydro will also follow NTPC's Code of Conduct and Policy A-3, this arrangement must be made specifically part of the NTPC Code of Conduct to avoid unintended consequences. [TGC Argument P4]

TGC submitted, unless the Code of Conduct provides for complete transparency as to why the Board of Directors of NT Hydro or an affiliate were able to divert a business activity needed to serve a new or existing load away from NTPC (for example), the proposed Code of Conduct provides little or no comfort in ensuring the interests of the regulated ratepayers are protected, nor does it provide any comfort in addressing some of the questions noted by the Board in Decision 13-2007 [TGC Argument P6]

4. VIEWS OF THE BOARD

The Board is concerned about the narrow basis for the NTPC participation in this review process. NTPC provided the Board and the interveners with responses which the Board has found to be lacking context and in some cases unhelpful.

For example, in answering IR BR-NTPC-7(a), the NTPC stated that it was the GNWT's decision, not the NTPC's, for the Taltson Expansion project to be unregulated by the Board. This limited response to the IR may be technically correct, but the Board and the interveners were aware of the general role that the GNWT played in this decision prior to receiving the NTPC response. It seems unlikely to the Board that the NTPC played no role in this decision and did not conduct any analysis or make a recommendation to the GNWT on this matter prior to the GNWT making its final decision. Unfortunately, NTPC did not provide any information about its specific role in this decision-making process. It was that analysis and recommendation that should have been explained in the response to IR BR-NTPC-7(a).

The Board is also of the view that the NTPC has either misinterpreted or very narrowly interpreted the Board's words in Decision 13-2007.

For example, in Decision 13-2007 [P.159], the Board wrote: "... *it is the Board's view that Bill 4 places NTPC into direct competition with its own parent company for new power customers.*" However, in its argument, the NTPC stated: "*The possible Taltson Expansion project is not in competition with NTPC as there is no need for that quantity of power by NTPC.*"

The NTPC concludes that there is no competition since it is NT Hydro that will be servicing the mines and constructing the Taltson Expansion. A careful reading of Section 12.1 of Decision 13-2007 though would have demonstrated that the “competition” that the Board was referring to includes the competition that would be expected to exist between the various affiliated entities (NTPC, NT Hydro or any of the others) *before the decision is made as to which company will pursue a particular opportunity*. As an independent, regulated entity, the NTPC should be competing with other entities, including NT Hydro and its other affiliates, for the opportunity to develop projects, perhaps including the Taltson Expansion, which will benefit new and existing regulated ratepayers subject to risk and other considerations outlined in the inter-affiliate policy.

The Board is also concerned that the NTPC appears to be interpreting the comment that the Board needs to ensure that projects undertaken by the NTPC’s affiliates “... *do not negatively impact upon the regulated ratepayers*.” in a limited way as simply meaning that NTPC needs to be compensated for services provided to its affiliates. Again, a careful reading of Section 12.1 of Decision 13-2007 would reveal that this is not the extent of the Board’s meaning of “negatively impact”. For clarity, the Board considers foregone benefits and revenues to NTPC and its regulated ratepayers as a result of projects being undertaken by NTPC’s affiliates rather than by NTPC itself to be negative impacts upon the regulated ratepayers that might require review by the Board.

As previously expressed in Decision 13-2007, the Board is of the view that a conflict of interest can result from the sharing of the same Board of Directors and Senior Management for both NTPC and NT Hydro, with the Taltson Expansion project being a significant and immediate example. The question to be resolved is how best to deal with that conflict. One approach might be for the NTPC and the NT Hydro to be split into unaffiliated, independent Crown corporations with

separate boards and management. Short of that, separate directors and management could be appointed for NTPC and NT Hydro. However, it is the GNWT, not the Board, which retains the authority to implement these options. As a result, the Board's directions in Decision 13-2007 and this Decision necessarily reflect the limitation of the Board's authority by dealing with the conflict of interest through the use of a code of conduct.

4.1 Distribution Connected Customers Served from Exempt Facilities

The *NT Hydro Act* resulted in certain amendments to the *PUA* as a result of which certain public utility functions provided by the Twin Gorges hydroelectric facility continue to be regulated by the Board and others exempt from Board regulation. The relevant Sections provide as follows

“2.1 (1) This Act shall apply to the supply and sale of energy generated by the Twin Gorges Hydroelectric Generating Facility on the Taltson River and any expansion of, addition to or replacement of that Facility, and distributed to customers in and near Enterprise, Fort Resolution, Fort Smith, Hay River and the Hay River Reserve

(2) This Act shall not apply to the supply and sale of energy generated by the Twin Gorges Hydroelectric Generating Facility on the Taltson River and any expansion of, addition to or replacement of that Facility, and distributed to customers over transmission lines that have not been constructed on the day this section comes into force, unless those lines connect with and branch off transmission lines that had been constructed before that day.”

The Board notes NTPC's comment that the exempt Taltson expansion project suits an unregulated framework since the proposed customers (the diamond mines) are not currently regulated customers; are not located in an area covered by an existing franchise and already have their own generation in place. NTPC indicates the Taltson expansion project requires significant up front speculative investment, which is not consistent with a potential future ROE at the levels typically approved by the Board. NTPC also draws a parallel for the exempted project with NUL YK where NUL YK acts as distributor of power purchased from NTPC. In this regard, NTPC states that the regulated customers can benefit when the distributor of power is not also the generator as NUL YK's customers do from NTPC's generation.

Based on the foregoing evidence, the Board understands the exempt facilities are intended to serve certain off-grid diamond mines off of the transmission system, the type of customers not presently served by NTPC. The Board interprets the Section 2.1(2) amendment to the *PUA* to mean, the exemption from regulation by the Board is not intended to apply to distribution connected customers of NTPC even though they may be served by exempt generation and transmission facilities, because distribution connected customers are currently regulated customers.

Accordingly, if the Taltson expansion project proceeds the Board directs NTPC and its affiliates to consider any distribution connected customers served from exempt generation and transmission facilities as regulated customers subject to the *Public Utilities Act*.

4.2 Inter-Affiliate Policy A-3

The Board notes TGC's concern that the Inter-Affiliate Policy A-3 has not been formally or otherwise adopted or approved by the parent, NT Hydro, or any of the other affiliates. TGC states NTPC must follow the Code of Conduct, but there appears to be no compulsion on the parent company or any of the affiliates to follow suit. In response NTPC states, to the extent it deals with its affiliates or its parent, those corporations will follow the code of conduct and policy.

The Board notes the preamble to policy A-3 states it is applicable to the NT Hydro and to NTPC. However, the other affiliates of NTPC and NT Hydro are not mentioned. For the policy to be applicable to affiliates as well, the Board considers the preamble should be amended as follows:

.. the Boards and management of the Northwest Territories Hydro Corporation (NT Hydro), the Northwest Territories Power Corporation (NTPC) and the Boards and management of the affiliates of these corporations will conduct business and make decisions based on the highest ethical and professional standards and minimize any potential for conflict of interest. In particular, the Boards and management shall conduct business and make decisions in a manner which considers and safeguards the interests of each corporation. Inter-affiliate activity and transactions shall be transparent and adhere to applicable inter-affiliate generally accepted accounting principles and NTPC's inter-affiliate code of conduct as approved by the Public Utilities Board.

The Board directs NTPC to reflect the above amendment to Policy A-3.

The Inter-Affiliate policy lists a number of guidelines for the Boards of Directors and management to consider when determining which business activities should be undertaken by which entity. The Board considers these guidelines to be generally useful for purposes of the inter-affiliate code. These guidelines are applicable to the interpretation of NTPC compliance with the detailed code of conduct for affiliate transactions as set out below. As well, when requested by the Board, the NTPC will need to clearly and satisfactorily explain in detail to the Board and the interested parties exactly how these guidelines were applied and a decision was reached as to which of the affiliated entities would pursue a particular project and/or new power customer. The following statement by the Board from Decision 13-2007 [P. 165] remains as valid now as it was then:

“The Board is also concerned by the NTPC’s apparent willingness to forego some projects in favor of allowing its non-regulated affiliated companies to take the lead with little to no justification being provided to the Board. The Board recognizes there are risks related to the economic and technical viability of certain alternative energy projects and notes NTPC’s view that such projects are better pursued by private business and Government rather than a Crown Corporation, such as NTPC. However, the Board notes that NTPC was able to manage such risks in the past through appropriate business arrangements with third parties such as the DPC with respect to the development of hydro on the Snare River. Assuming risk considerations can be addressed through appropriate business arrangements as in the past, the Board expects NTPC to take the lead in aggressively pursuing, from a least cost planning perspective, alternative energy, demand side management and energy efficiency project opportunities while ensuring that project decisions are made in the best interests of NTPC’s regulated ratepayers rather than NTPC’s affiliates.”

4.3 NTPC Code of Conduct

4.3.1 Affiliate Definition

The Board notes NTPC did not provide a definition of the term affiliate as part of the code of conduct proposal. The Board considers a definition of affiliate is necessary in order to avoid ambiguity when it comes to application of the code. Accordingly, the Board has substantially adapted the following definition for affiliate from the ATCO group code of conduct as set out in the Alberta Energy and Utilities Board Decision 2003-40, Appendix 5.

Affiliate means with respect to the NTPC code of conduct:

- a) an affiliate as defined below:
 - i) if one body corporate is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person; and
 - ii) if 2 bodies corporate are affiliated with the same body corporate at the same time, they are deemed to be affiliated with each other
- b) a partnership, joint venture, or Person in which the Utility or any Body Corporate referred to in clause (a) above has a controlling interest or that is otherwise subject to the control of the Utility or such Body Corporate;

The Board directs NTPC to reflect the above definition of Affiliate in the NTPC code of conduct.

4.3.2 Purpose and Objectives of the Code

The Board considers the intent of the NTPC code of conduct is:

- regulated operations do not subsidize the non-regulated operations undertaken by the Corporation;
- affiliates and their customers do not have preferential access to customer and other information which may provide any undue advantage to affiliates;
- no preferential access to utility services is provided to the non-regulated operations.

NTPC states additional steps will be undertaken to improve documentation of transactions and enhance inter-affiliate transparency including segment reporting in financial statements, budget reviews of affiliate transactions and employee education with respect to the treatment of inter-affiliate transactions. [NTPC Argument P28]

The Board considers the objectives of the code are to:

- a) Create a clearly defined set of rules designed to enhance the transparency of inter-affiliate transactions, fairness and senior management accountability with respect to inter-affiliate interactions impacting regulated businesses;
- b) provide an environment in which inter-affiliate economies and efficiencies can legitimately occur for the mutual advantage of both a utility's customers and its shareholders;

- c) develop support and respect for the Code by the employees, officers and directors of the affiliated group of companies, which will in turn promote ratepayer confidence in the application of the Code; and
- d) the creation of regulatory processes and cost efficiencies through the consistent application of a clear set of standards and reporting requirements to utility inter-affiliate transactions, enhanced by a practical, resolution driven, dispute process.

The Board directs NTPC to incorporate the above intent and objectives into the NTPC code of conduct.

4.3.3 Shared Services and For Profit Affiliate Services

NTPC states at the present time and for the foreseeable future, NTPC's affiliate transactions involve sharing of financial reporting, purchasing, IT support and senior management services with NTEC, NTEC(03) and Sahdae. The Board considers Shared Services to be those where employees or assets are being shared to provide financial reporting, IT support and senior management services. In the Board's view, Shared Services may be priced on a Cost Recovery Basis provided, the utility, acting prudently, ensures such treatment is consistent with the intent of the code of conduct for affiliate transactions outlined above.

Under the Cost Recovery Basis, the fully burdened cost of employees providing the shared service for the time period they are used by the Affiliate, including salary, benefits, vacation, materials, disbursements and all applicable overheads shall be used for determining shared employee costs. Where there are shared

costs arising from the sharing of assets, an allocated share of capital and operating costs appropriate for the time period utilized by the Affiliate shall be used for determining shared asset costs.

When a utility provides to or takes from an Affiliate services, resources or products, that do not fit the description of Shared Services outlined above the Board considers these to be For Profit Affiliate Services. The Board considers the transfer price respecting For Profit Affiliate Services should reflect the fair market value. The onus is on the utility to demonstrate the transfer price of the services, resources or products reflects the fair market value.

Using the Taltson Expansion project as an example, any sharing of assets, services or resources, including any excess water by the unregulated activities at Twin Gorges, should be subject to fair market value pricing. As pointed out by HC, shared assets in the context of the Twin Gorges expansion may include both capital and operations and maintenance costs for the original dam and spillway, costs for water licensing, land rights and surveys and communication systems. The Board also does not accept without evidence the NTPC's assertion that "*NTPC does not have the authority to charge DEC for the use of water*" [NTPC Reply P.6]. The water licensing system under the *Northwest Territories Waters Act* provides for a priority of use by the current (regulated) licensee and for a requirement that any new water user pay compensation to affected existing users. It is not credible to the Board to suggest that if an unaffiliated entity were to attempt to construct a hydro unit and simply use the water stored by the Nonacho dam that the NTPC could not legally protect its rights to use that water for its own purposes.

In demonstrating that fair market value was paid or received pursuant to a For Profit Affiliate Service arrangement, the NTPC may utilize any method to

determine fair market value that it believes appropriate in the circumstances. These methods may include, without limitation: competitive tendering, competitive quotes, bench-marking studies, catalogue pricing, replacement cost comparisons or recent market transactions. The NTPC shall bear the onus of demonstrating that the methodology or methodologies utilized in determining the fair market value of the subject goods or services was appropriate in the circumstances.

The Board directs NTPC to reflect the above determination respecting Shared Services and For Profit Affiliate Services in the NTPC code of conduct.

The Board also directs that the revenues earned and costs allocated in establishing the Shared Services and the Fort Profit Affiliate Services be properly forecast and accounted for in setting the NTPC's revenue requirement in future GRAs.

5. SUMMARY OF BOARD DIRECTIONS

The following is a summary of the Board directions arising from this Decision:

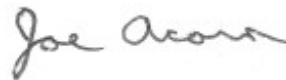
1. If the Taltson expansion project proceeds, the Board directs NTPC and its affiliates to consider any distribution connected customers served from exempt generation and transmission facilities as regulated customers subject to the *Public Utilities Act*.
2. The Board directs NTPC to reflect the amendment to Policy A-3 as set out in Section 4.2.
3. The Board directs NTPC to reflect the definition of Affiliate as set out in Section 4.3.1 in the NTPC code of conduct.
4. The Board directs NTPC to incorporate the intent and objectives as set out in Section 4.3.2 in the NTPC code of conduct.
5. The Board directs NTPC to reflect the Board's determinations respecting Shared Services and For Profit Affiliate Services as set out in Section 4.3.3 in the NTPC code of conduct.
6. The Board directs that the revenues earned and costs allocated in establishing the Shared Services and the Fort Profit Affiliate Services be properly forecast and accounted for in setting the NTPC's revenue requirement in future GRAs.

6. BOARD ORDER

NOW, THEREFORE IT IS ORDERED THAT:

1. The Board directs NTPC to file an amended Policy A-3 and NTPC Code of conduct in accordance with the directions in this Decision within 30 days of this Decision.
2. Nothing in this Decision or Order shall bind, affect or prejudice this Board in its consideration of any other matter or question relating to Northwest Territories Power Corporation.

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



**Joe Acorn
Chairman**

Dated February 6, 2009