



B R O W N L E E
L L P
Barristers & Solicitors

Refer to: T.D. Marriott
Direct Line: (780) 497-4868
E-mail: tmarriott@brownleelaw.com
Your File#:
Our File#: 71325-0035 TDM

December 7, 2007

Mr. Joe Acorn, Chairman
Northwest Territories Public Utilities Board
203-62 Woodland Drive
Hay River, NT X0E 1G1

Dear Mr. Acorn:

**Re: Argument of the Hydro Communities (HC)
NTPC Review and Variance Application on Decision 13-2007**

The Hydro Communities are submitting this Argument further to the Board's ruling in its letter of November 28, 2007 to proceed with a review of Directives 14 and 15 from Decision 13-2007. The HC note that the Board considers that NTPC has not met the threshold for a review on Grounds 2 and 3 raised by NTPC in its Application for Review and Variance (the "Application") and will not address those grounds.

This Argument will briefly address some of the background comments from NTPC in addition to Ground No. 1 and Directive 14.

Background

At page 2 of the Application, NTPC states that none of the HC's or TGC's written evidence or the corresponding responses to information requests addressed forecast brushing expenses. The inference here is that the only evidence on the record is that filed by NTPC. The HC submit that the matter was clearly raised in Information Requests, NTPC was cross-examined on the issue, NTPC provided a response to an undertaking and the HC addressed the issue in Argument. Indeed the HC argument at page 18 referred to the evidence on forecast brushing expenses contained in NTPC's response to HC.NTPC-13 (m), in BR.NTPC-12(b) and in Exhibit 25.

Accordingly, the HC submit that the Board should consider the entire record in addressing the review and variance of brushing expenses.

At page 2, NTPC states that the Board reviewed the positions of the parties at pages 101-106 of Decision 13-2007. One paragraph refers to the position of the HC. For the record, the Board also summarized the HC argument much more adequately and completely at pages 103 and 104 of Decision 13-2007. That passage includes the following quotation from page 19 of Argument, wherein the HC noted:

“..Assuming that the forecast test year expenditures are now in fact required to bring brushing up to standard, the normalized annual brushing over the 7-year period will have been approximately \$92,000 per year for transmission and \$86,000 per year for distribution. On this basis the Hydro Communities submit that transmission brushing should be reduced by \$121,000 and \$125,000 in the test years and distribution brushing should be reduced by \$94,000 and \$98,000 in the test years to ensure that NTPC is not compensated twice for the same work.”

Ground No. 1

NTPC claims that Schedule C, Decision 1-2002 does not break out any amounts for brushing expenses and accordingly the Board did not require NTPC to spend or incur a specific amount for brushing expenses and concludes at page 6 that the revenue requirement is not approved on a line-by-line basis. The HC submit that the amounts for brushing were provided in the 2001/02/03 GRA and were not specifically addressed in the Negotiated Settlement. It appears that NTPC is relying on the lack of detail provided in the Negotiated Settlement to suggest that no specific amounts were approved for brushing. To the contrary, it could be argued that unless a specific adjustment was noted in the Negotiated Settlement, the forecast brushing expenses should be at or near those included in the application.

This is an important distinction when considering the regulatory compact. As noted by the Board:

“when a utility’s actual expenditures are significantly and consistently below what was forecast (and upon which the rates were approved by the Board as being just and reasonable) that these circumstances could be evidence of a violation of the regulatory compact.”¹

The HC submit that there was a real expectation that the brushing expenses were approximately those set out in the original application. As demonstrated by the table at page 18 of the HC

¹ Pages 3-4, Board letter November 288, 2007
{07/12/2007 ,E0641365.DOC;1}

Argument, actual brushing expenses were significantly less than those included in rates which were approved as being just and reasonable and NTPC offered no reasonable explanation for this variance. Especially in the years 2001/2002 and 2002/2003 the variances were so marked that they cannot reasonably be viewed as normal fluctuations offsetting variances in other expenses. Rather the HC submit that this appears to be a violation of the regulatory compact as noted by the Board. Under the regulatory compact, the Board must have the ability to review and take into account a utility's actions and arbitrary reductions in expenditures and levels of service or maintenance that may have affected risk, reliability and safety.

Directives 14 and 15

The HC consider that it would not be unreasonable to argue that a violation of the regulatory compact has occurred based on actual brushing expenditures being consistently and significantly below what was forecast as evidenced in Table 6.5 at page 102 of Decision 13-2007.

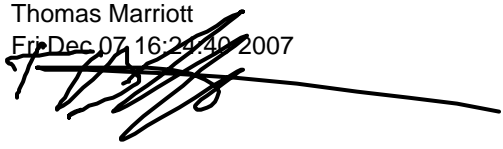
Alternatively, if there is any doubt about the Board's ability, within the law, to direct NTPC to refund the \$345,000 to customers, then it is submitted that the Board rescind Directive 15 and reduce the approved 2006/07 and 2007/08 forecast brushing expenditures to \$178,000 in each test year in Directive 14 to reflect normalized annual brushing expenditures based on an analysis of the 7 year period summarized below.

As noted in Argument by the HC, assuming that the forecast test year expenditures are in fact required to bring brushing up to standard, the normalized annual brushing expenses over the 7-year period will have been approximately \$92,000 per year for transmission and \$86,000 per year for distribution. Based on the most recent 5 years of actual brushing expenses, it could be argued that the normalized brushing expenses should be \$79,000 for transmission and \$47,000 for distribution. The HC submit that normalized brushing expenses of \$92,000 and \$86,000 for transmission and distribution respectively should be viewed as a conservative normalized forecast for the test years. In the HC's view reducing the approved forecast for the forecast years to these levels based on the historic normalized levels is unquestionably within the Board's powers and entirely consistent with the evidence.

Yours truly,

BROWNLEE LLP

Thomas Marriott
Fri Dec 07 16:24:40 2007



THOMAS D. MARRIOTT
Counsel for the Hydro Communities