

NORTHWEST TERRITORIES PUBLIC UTILITIES BOARD

IN THE MATTER OF the *Public Utilities Act*, R.S.N.W.T. 1988, c. 24 (Supp.), as amended; and

IN THE MATTER OF the *Northwest Territories Power Corporation Act*, R.S.N.W.T. 1988, c. N-2, as amended; and

IN THE MATTER OF Northwest Territories Public Utilities Board Decision 13-2007 dated August 29, 2007;

IN THE MATTER OF an application dated November 5, 2007 made by the Northwest Territories Power Corporation seeking review and variance of Board Decision 13-2007 (Directive Nos. 15 and 45); and

IN THE MATTER OF Northwest Territories Public Utilities Board letter decision dated November 28, 2007.

**REPLY ARGUMENT OF
THE NORTHWEST TERRITORIES POWER CORPORATION**

DECEMBER 14, 2007

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1 **1. Introduction**

2 The Northwest Territories Power Corporation (the “Corporation” or “NTPC”) has received
3 written argument in this Review and Variance proceeding filed on behalf of the City of
4 Yellowknife and the Towns of Hay River and Fort Smith (collectively the “HC”) dated
5 December 7, 2007 (the “HC Argument”). The Corporation also filed written argument in this
6 proceeding dated December 7, 2007 (the “NTPC Argument”).

7 The Corporation has organized its Reply Argument with reference to the appropriate headings
8 used in the arguments filed by the Corporation and the HC. Terms and phrases defined in the
9 NTPC Argument have the same meaning in this Reply Argument unless otherwise specified
10 herein. To the extent that the Corporation does not expressly reply to an issue raised or position
11 taken by the HC, the Corporation has no position on that matter and should not be deemed to
12 agree with or consent to the HCs’ position.

13 **2. Background**

14 The HC refer to the fact that it submitted Information Requests, cross-examined, sought
15 undertakings and made argument on brushing, and take the position that “...the Board should
16 consider the entire record in addressing the review and variance of brushing expenses.”¹ The
17 Corporation agrees that the Board should consider the entire evidentiary record. However, the
18 HCs’ Information Requests, cross-examination questions, requests for undertakings and
19 argument do not constitute evidence. Rather, it is the Corporation’s responses to those requests
20 and questions that is evidence in the Decision 13-2007 proceeding. The evidentiary record on
21 brushing was noted in the Corporation’s Written Argument.²

22 **3. Directive No. 15**

23 The HC claim that “...NTPC is relying on the lack of detail provided in the Negotiated
24 Settlement to suggest that no specific amounts were approved for brushing.”³ The HC go on to
25 conclude that because “...in the years 2001/2002 and 2002/2003 the variances were so marked
26 that they cannot reasonably be viewed as normal fluctuations offsetting variances in other
27 expenses”, there appears to be violation of the regulatory compact.⁴

28 To be clear, NTPC relies on the Board’s historical practice and order in Decision 1-2002 as
29 authority for the position that no specific amounts were approved for brushing. Further, the HC
30 do not identify any legal authority (nor did the Board) that would authorize the Board to
31 retroactively regulate the Corporation’s 2001/02 to 2005/06 brushing expenses under an alleged
32 breach of the regulatory compact or otherwise. As discussed at pages 8-11 of the R&V
33 Application and pages 3 & 6-8 of the NTPC Argument, only express or implied provisions in the
34 *Public Utilities Act* can confer upon the Board the requisite jurisdiction to issue Directive No. 15.

¹ HC Argument at 1-2.

² NTPC Argument at 5, footnote 13.

³ HC Argument at 2.

⁴ HC Argument at 3.

1 Because the *Public Utilities Act* contains no such provisions, the Board lacks jurisdiction and
2 cannot issue Directive No. 15.

3 **4. Directive No. 14**

4 The HC take the position that if a breach of the regulatory compact does not justify Directive No.
5 15, then the Board should "...rescind Directive 15 and reduce the approved 2006/07 and 2007/08
6 forecast brushing expenditures to \$178,000 in each test year in Directive 14 to reflect normalized
7 annual brushing expenditures based on an analysis of the 7 year period summarized below."⁵

8 The Corporation noted in its Written Argument that, if the Board's concern was that NTPC's
9 GRA brushing forecasts have significantly and consistently exceeded actual expenses, then an
10 adjustment to Directive No. 14 would have been an appropriate course of action.⁶ In that case,
11 the Board would have to scrutinize NTPC's forecast methodology, potentially find that the
12 2006/07 and 2007/08 brushing forecasts are too high and reduce the total approved revenue
13 requirement. Further, rather than using a seven-year average, as suggested by the HC, a more
14 reasonable approach that would better reflect current brushing practices would be to use an
15 average of actual brushing expenses over the most recent three years (2003/04 to 2005/06). This
16 methodology would result in 2006/07 GRA brushing forecasts of \$118,000 for transmission and
17 \$72,000 for distribution (\$190,000 for total brushing).⁷ The 2007/08 GRA brushing forecasts
18 could then be inflated by 2% (which follows the same methodology in the Corporation's
19 Application), resulting in \$120,000 for transmission and \$73,000 for distribution (\$193,000 for
20 total brushing).

21 **ALL OF WHICH** is respectfully submitted this 14th day of December, 2007.

22 **Borden Ladner Gervais LLP, counsel for**
23 **the Northwest Territories Power**
24 **Corporation**

25
26 *"Stephen Lee"*

27 per: _____
28 Stephen C. Lee

⁵ HC Argument at 3.

⁶ NTPC Argument at 4, footnote 6.

⁷ Ex. 25, Undertaking #7.