

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

IN THE MATTER OF Section 78 of the *Public Utilities Act* R.S.N.W.T. 1988, c. 24 (Supp.);

AND IN THE MATTER OF Decision 13-2007 of the Northwest Territories Public Utilities Board dated August 29, 2007 regarding the Northwest Territories Power Corporation's 2006/07 and 2007/08 Phase I General Rate Application;

AND IN THE MATTER OF an application for a extension of time and leave to appeal the aforesaid Northwest Territories Public Utilities Board decision by Northwest Territories Power Corporation being named therein;

**BETWEEN:**

**NORTHWEST TERRITORIES POWER CORPORATION**

Applicant  
(Appellant)

- . and -

**PUBLIC UTILITIES BOARD of the NORTHWEST  
TERRITORIES**

Respondent  
(Respondent)

**ORIGINATING NOTICE OF MOTION FOR LEAVE TO APPEAL**

**TAKE NOTICE** that a motion will be made on behalf of the Northwest Territories Power Corporation pursuant to Section 78 of the *Public Utilities Act* R.S.N.W.T. 1988, c. 24 (Supp.) (the "*PUA*") and the Rule 78 of the Rules of the Supreme Court R-010-96 (the "*Rules*") before the presiding Justice of the Supreme Court of the Northwest Territories for an Order:

- (a) granting an extension of the time period to apply to the Supreme Court for leave to appeal Decision 13-2007 of the Northwest Territories Public Utilities Board (the "Board") dated August 29, 2007 ("Decision 13-2007") regarding the Northwest Territories Power Corporation's ("NTPC") 2006/07 and 2007/08 Phase I General Rate Application;
- (b) if the extension of time sought in (a) above is granted, adjourning the hearing of NTPC's application for leave to appeal Decision 13-2007 *sine die* pending a

decision from the Board on NTPC's Application to Review and Vary Decision 13-2007 dated November 5, 2007 ("NTPC's R&V Application"); and

- (c) upon receipt of a decision from the Board on NTPC's R&V Application, granting leave to appeal Decision 13-2007.

**AND FURTHER TAKE NOTICE** that the grounds of the aforesaid application are:

- (a) in relation to the application to extend time:
  - (i) NTPC had a *bona fide* intention to appeal Decision 13-2007 within the 45 day limitation period and has an explanation why the leave to appeal application was not brought within 45 days of NTPC receiving notice of Decision 13-2007;
  - (ii) no party to the Board's Decision 13-2007 proceeding will be seriously prejudiced and it would not be unjust to disturb Decision 13-2007;
  - (iii) NTPC has not taken any benefits from Decision 13-2007 in relation to the matters sought to be appealed; and
  - (iv) NTPC has a reasonable chance of success on the appeal if leave is granted based upon the grounds for leave to appeal Decision 13-2007 set out in paragraph (c) below;
- (b) in relation to the application to adjourn the hearing of NTPC's application for leave to appeal Decision 13-2007 *sine die* pending a decision by the Board on NTPC's R&V Application:
  - (i) NTPC's R&V Application raises the same issues and the same grounds as this application for leave to appeal;

- (ii) adjourning the application for leave to appeal will allow the Public Utilities Board process to consider NTPC's R&V application to be completed;
  - (iii) a decision by the Board on NTPC's R&V Application may render the application for leave to appeal Decision 13-2007 moot; and
  - (iv) justice and the public interest are better served by avoiding duplicate proceedings as well as the potential for inconsistent decisions from this Honourable Court and the Board.
- (c) in relation to the application for leave to appeal Decision 13-2007:
- (i) having previously approved a total revenue requirement for NTPC in Board Decision 1-2002 on a forward test year basis, the Board erred in law and jurisdiction 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");
  - (ii) 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
  - (iii) having accepted and considered NTPC's 2006/07 and 2007/08 Phase I General Rate 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.

**AND FURTHER TAKE NOTICE** that an Order may be sought extending the time for service of this application.

**AND FURTHER TAKE NOTICE** that in support of this application the Applicant shall rely upon:

- (a) Board Decision 1-2002 dated February 15, 2002;
- (b) Decision 13-2007;
- (c) the record of the proceedings before the Board that resulted in Decision 13-2007;
- (d) the *PUA*;
- (e) Public Utilities Board *Rules of Practice and Procedure*, N.W.T. Reg. 047-96;
- (f) the Affidavit of Leon Courneya, filed; and
- (g) such further and other materials as this Honourable Court may permit.

**AND FURTHER TAKE NOTICE** that the motion will be before the presiding Judge in Chambers at 4903, 49<sup>th</sup> Street in Yellowknife, Northwest Territories on Friday, the 16th day of November, 2007 at the hour of 10 o'clock in the a.m. or so soon thereafter as the parties may be heard;

BORDEN LADNER GERVAIS LLP,

Per:



Stephen Lee.  
Solicitors for the Applicant,  
Northwest Territories Power  
Corporation

TO: The Registrar, Supreme Court of the Northwest Territories  
Yellowknife, Northwest Territories

AND TO: The Northwest Territories Public Utilities Board

AND TO: The City of Yellowknife and the Towns of Hay River and Fort Smith  
c/o Brownlee LLP, Attn: Tom Marriott

AND TO: The Town of Inuvik, Village of Fort Simpson and Hamlet of Fort Liard  
c/o A.O. Ackroyd Q.C., Barrister and Solicitor

AND TO: Mr. David Wind

AND TO: The Community of Behchoko

**CERTIFICATE**

I, Stephen Lee of Borden Ladner Gervais LLP, solicitors for the Applicant, Northwest Territories Power Corporation, certify that on Tuesday, the 5<sup>th</sup> day of November, I received file # FKV2007000219 from Bernice Dillman, Clerk of the Court by telephone/telecopier.



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Applicant's address for service:  
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c/o Northwest Territories Power Corporation  
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File No. 408318-000054