

NORTHWEST TERRITORIES POWER CORPORATION
2006/2007/2008 GENERAL RATE APPLICATION
PHASE II AND RATE FINALIZATION

REPLY ARGUMENT OF THE CITY OF YELLOWKNIFE, THE TOWN
OF HAY RIVER AND THE TOWN OF FORT SMITH

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BROWNLEE LLP
Barristers and Solicitors

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1. INTRODUCTION

This Reply Argument is submitted on behalf of the City of Yellowknife, the Town of Hay River and the Town of Fort Smith (“the Hydro Communities” or “HC”) to address certain portions of the Northwest Territories Power Corporation (“NTPC”) Written Argument and the Thermal Generation Communities (“TGC”) Argument which they consider to be in error, incomplete or to unfairly represent the evidence.

Unless expressly stated, this Reply does not address matters put forward in Argument by other parties, which are generally supportive of the position taken by the Hydro Communities. However, lack of response should not necessarily be treated as acceptance of the position of NTPC or other parties.

For convenience, paragraph references are consistent with those used by NTPC to the extent possible.

At page 3, NTPC notes that the rate design approach illustrated in BR-NTPC-1 has considerable merit and should be given due consideration by the Board, that this approach could be easily implemented in place of the approvals requested if the Board determines that it prefers that rate approach.

The HC addressed this issue at page 3 of its Argument noting that the introduction of these new approaches through a response to a Board Request does not provide any opportunity to test the large amount of new material and significantly higher rate and rider increases to the Hydro Communities other than through Argument and now Reply. As noted in Argument, the introduction of this new evidence at that stage is not fair, is not consistent with the long-standing practice regarding rate zones and is not consistent with the premises under which the agreement to the simplified process was obtained.

In its Executive Summary, NTPC noted:

“Further, the GNWT is presently undertaking a review of electricity rate regulation and subsidies in the NWT. There will be opportunities for customers and other interested parties to participate in public consultation as part of that review. The results of the review may affect future directions in rate design and rebalancing in the NWT.”¹

And,

“**3. Fairness:** Addressing the Rate Stabilization Fund and the GRA Shortfall balances in a timely way helps to ensure that the customers who used the energy while these balances were accumulated are the same customers who pay off the balances, without burdening future customers.”²

And further,

“**3. Consideration of the existing subsidy programs** – The Corporation’s proposal considers the fact that most residential customer bills are levelized to the Yellowknife rate for the first 700 kWh of consumption each month. Therefore, the Corporation has chosen to propose lower rate riders for the Snare Yellowknife system due to the fact that rate increases in Yellowknife impact residential customers for the first 700 kWh of consumption each month.”³

Given the position taken in its application as noted above, the proposal now touted by NTPC in argument represents a severe about face in position. NTPC may be motivated by the fact that increasing the Yellowknife rates will result in lower TPSP payments by its shareholder, the GNWT, in all other communities. Not only has NTPC abandoned its above referenced definition of fairness and its position that lower rates in Yellowknife will in fact mitigate the impact on residential customers in all other communities, which were its evidence in the application, but it is now asking the Board to depart from its

¹ Executive Summary, page ES-viii

² Executive Summary, page viii

³ Executive Summary, page ES-ix

long-standing practice of maintaining separate rate zones that dates back to Board decisions from the early 1990's, all of this just months before the GNWT is expected to issue its review of electricity rate regulation and subsidies in the NWT.

Inexplicably, the TGC also support this position even though it will result in higher rates to all of its residential constituents.⁴ The TGC notes that the base rider plus the fuel rider exceed 15% and provide the example of residential rates in Fort Simpson increasing 12.76% without the stabilization rider and 29.07% with the stabilization riders.⁵ Clearly, these figures are entirely misleading as they ignore the fuel price updates which the TGC itself recommends at page 12 and more importantly, ignores the TPSP which would reduce net residential customer bills to the Yellowknife residential rates at least until the GNWT has reviewed its policy. There is no reason to ignore the TPSP, at least for the next 6 months while the GNWT is reviewing this policy. If necessary, the Board can react accordingly at that time if the policy changes.

The Hydro Communities submit that the Board should maintain its long-term practice of separate rates zones at least until such time as the GNWT has heard from customers and other interested parties and has provided directions regarding future rate design and rebalancing in the NWT. As discussed in the HC Argument, the impacts of fuel price increases have been mitigated to a great extent due to recent decreases in world crude oil and diesel fuel prices that have recently fallen below those forecast in the 2006/07/08 GRA. The HC submit that the fuel price changes since the GRA no longer constitute an "extraordinary event" and do not warrant departure from the Board's long-standing practice of maintaining separate rate zones. In anticipation of a potential objection from NTPC that this involves the consideration of "new evidence" the HC submit that it is trite law that the Board, like other adjudicators of fact, is entitled to take judicial notice of facts that are so well known or notorious that they cannot be refuted.

⁴ Argument, page 12

⁵ Footnote 24, page 11

2. BACKGROUND

NTPC notes at page 5 that Sections 51(2), 63 and 23 of the *Public Utilities Act* empower the Board to grant a wide range of relief in respect of the Application. Nevertheless, the Board is subject to the rules of natural justice and must govern itself accordingly. As previously noted in Argument and this Reply, in the context of a written proceeding, the introduction of new evidence through a response to a Board Request is not consistent with the long-standing practice regarding rate zones and is not consistent with the premises under which the agreement to the simplified process was obtained. NTPC appears to be asking the Board to approve a methodology which it did not request in its application and that was not noted in its request for a simplified approach. This is patently unfair and the Board should resist such changes in the context of the simplified approach it approved. The HC submits that conversely, approval in this context would constitute an error in law or jurisdiction.

Starting at the bottom of page 5, NTPC notes that volatile fuel prices affected all aspects of the Phase II Application and that fuel prices had increased up to 60% since NTPC filed the Phase I Application (i.e. from \$75/bbl (\$US) crude oil up to \$120 /bbl (\$US)). While this does not materially impact the “catch-up” or Balance Retirement Component of the Rider, NTPC is conspicuously silent and has conveniently failed to note the fact that the October 20 NYMEX crude oil price over the remaining period until April 1, 2009, when it recommends that the “keep-up” or Fuel Price Variance Component of the Riders next be reviewed, has slipped dramatically to about \$72 to \$74/bbl (\$US), or a small reduction from the \$75/bbl (\$US) forecast in the Phase I GRA, as compared to the 60% increase that NTPC notes in its Argument. Although NTPC did update fuel prices as at September 19, 2008 at the request of the HC⁶ and the Board⁷, the fact that NTPC does not reference the very significant reductions in fuel prices up to the time of its Argument is disingenuous at best.

⁶ HC-NTPC-9(a)

⁷ BR-NTPC-2(e) and BR-NTPC-4(e)

3. INTERIM RATES FOR 2006/07 AND ALL PREVIOUS PERIODS

The Hydro Communities do not object to final approval of the 2006/07 interim rates that were in effect during that period.

4. CONSOLIDATION OF THE 2006/07 AND 2007/08 GRA SHORTFALLS

As noted in Argument, the Hydro Communities accepted the adjusted base rates and GRA shortfall riders as reasonable.

5. ADJUSTMENTS TO 2007/08 BASE RATES, STABILIZATION FUND RIDERS AND SHORTFALL RIDERS

At pages 7-8, NTPC discusses the consolidation of the 2006/07 and 2007/08 shortfalls and references Schedules B.1 and B.2 regarding the collection of these shortfalls. As noted in Argument, the Hydro Communities accepted the method of determining the adjusted base rates and the calculation of the shortfall riders albeit they will now need to be calculated over a somewhat longer period, perhaps 24 months, to stay under the 15% cap.

At pages 8-9, NTPC summarizes the rate design criteria used in the application. The HC have several concerns with these criteria. First, NTPC identifies \$5.8 million in the “keep-up” or Fuel Price Variance Component of the Fuel Riders. As previously noted, NTPC continues to ignore the fact that recent fuel prices have actually fallen below those forecast in the Phase I GRA. Given that this component of the rider is proposed to reflect the increased cost of fuel in the first 6 months of the process, the recent fuel price reductions will have largely mitigated if not eliminated the “keep-up” component of the Fuel Stabilization Rider.

Second, NTPC assumes that the maximum recovery period for the “catch-up” or Balance Retirement Component must be 18 months. Considering that the “keep-up” portion of the

Fuel Stabilization Rider should be virtually eliminated based on current crude oil and diesel fuel price forecasts, the GRA shortfall plus the “catch-up” portion of the Fuel Rider could be limited to 15% for those few communities which are forecast to have GRA Shortfall Riders in excess of 15% by extending the recovery period to approximately 24 months. If this were done, then NTPC’s stated criteria of avoiding inter-community cross-subsidization where possible⁸ could be maintained. While it may be desirable to recover the shortfalls in 18 months, there does not appear to be any compelling reason why it could not be achieved over 24 months for those communities that exceed 15% on a total rate and rider increase basis.

At pages 9-10, NTPC goes on to extol the alternative approach first identified in the responses to BR-NTPC-1, 2 and 4. In Argument, the HC agreed with the Base Rate adjustments. However, the Hydro Communities are strongly opposed to the proposed “crystallized catch-up” and question the very need for this proposal given the significant reductions in crude oil and diesel fuel prices since the September 26 update by NTPC and the GNWT’s Rate Review which will be completed in early 2009. The Board requested NTPC comments on whether the increases in diesel costs over the past 12 months could be considered an “extraordinary event” and asked NTPC to provide a new set of schedules to show the impacts of several scenarios. It should be noted that Table 1 and Table 2 in NTPC’s Argument are based on crude oil prices on or about September 26, 2008 which were \$107/bbl (\$US). As noted above, NYMEX prices as of October 20, 2008 were below the \$75/bbl (\$US) utilized in the 2006/07/08 GRA and well below the prices reflected in those tables. The HC consider that it would be misleading and inappropriate to rely on Table 1 and 2 as contained in NTPC’s Argument to determine the appropriate GRA and Stabilization Fund Riders.

Since NPC has not updated its evidence to reflect the latest crude oil and diesel fuel prices, it would be instructive to look at a few examples that reflect the most recent updates in fuel prices and their impacts on the GRA and Stabilization Fund Riders. Starting with Fort Simpson, which the TGC used as an example in support of its 15%

⁸ Argument, page 9

maximum rate increase recommendation, the Fuel Price Variance Component of the Diesel Communities Fuel Stabilization Fund Rider will be largely mitigated by the most recent fuel price update. As noted at page C-6, NTPC used the weighted average forecast to be in place effective January 1, 2009 to determine the “keep-up” portion of the rider. Since NYMEX prices have now dropped below the \$75/bbl used in the GRA forecast, the Price Variance Component of the Rider should go to zero or even slightly negative. For purposes of discussion, the HC have assumed this portion of the rider should be set at zero for the first 6 months.

Turning to the Balance Remaining portion of the Diesel Communities Fuel Rider, NTPC did update the Balance Remaining portion of the Fuel Rider in BR-NTPC-4(e), Schedule C.1 and based on a 17 month recovery-period, this had increased to 4.67 cents per kWh. As previously noted in Argument, the HC submit that this estimate should be updated using the latest information available in a Compliance Filing.⁹ The 4.67 cents per kWh represents an increase of 2.55 cents over the existing Fuel Rider of 2.12 cents. The proposed GRA Rider was capped at 15% or 13.37 cents per kWh which represents an increase of 7.77 cents over the existing shortfall rider of 5.60 cents per kWh. Taken together, the proposed (total) increase would be 10.32 cents per kWh on total current rates and riders of 62.69 cents per kWh (54.97 + 2.12 + 5.60 cents per kWh) or about 16.5% for Fort Simpson.

Turning to another example, Norman Wells, which appeared to be the extreme case in the original application, circumstances have changed materially. With the drop in crude oil and diesel prices below the GRA forecast, the Price Variance Component or “keep-up” of 18.75 cents per kWh¹⁰ should be effectively eliminated while the Balance Retirement Component or “catch-up” has increased to 5.92 cents per kWh.¹¹ Combined with the increase in the shortfall rider from (1.63) cents per kWh to (1.93) cents per kWh, the combined increase would be 5.62 cents on current base rates and riders of 38.06 cents per

⁹ Argument, page 8

¹⁰ Application, Schedule C.1

¹¹ BR-NTPC-4(e), Schedule C.1

kWh or 14.8% or just under the cap but well below the 60% noted by NTPC at page 6 of its Argument.

As noted later in this Argument, the Hydro Communities submit that the late filing of the 2006/07/08 GRA has also contributed materially to the quantum of the remaining GRA shortfalls to be recovered. The Hydro Communities should not be asked to pay in excess of the costs attributable to their respective rate zones to compensate for what the Board deemed was a late filing.¹²

The question that must be asked is whether these reduced shortfalls still constitute an “extraordinary event” or whether there is a viable alternative solution. The Hydro Communities submit that the updated pricing shows that the extraordinary event has been largely mitigated by the recent reductions in crude oil and diesel fuel prices. Further, the existing TPSP will largely mitigate these increases for most residential customers and mitigate it to some degree for general service customers. However, if the Board does not wish to recognize the subsidy programs that will be in place at least until the GNWT Rate Review is completed then it could consider a longer recovery period of say 24 months to limit increases to 15% or less. The Hydro Communities submit that cross-subsidies between rate zones can and should be avoided at least until such time as the GNWT has completed its Rate Review in 2009.

6. INTEREST RATE APPLICABLE TO SHORTFALL BALANCES

Starting at page 13, NTPC summarizes the impact of Decision 16-2008 which was essentially to reduce interest on the 2006/07 and 2007/08 shortfalls to 50% of the Bank of Canada Prime Business Rate from April 1, 2007 through October 1, 2009. The reasons for the reduction in interest rates were described in Decision 16-2008 as follows:

“the Board finds that if the NTPC had filed its GRA earlier in the test year that the size of the 06/07 shortfall would have been greatly reduced. In that case, most of

¹² Decision 16-2008, pages 13 and 15

the shortfall would have been collected using interim rates within the 06/07 test year.”¹³

And,

“It is the Board’s view that the NTPC bears as much responsibility for the existence and size of the 07/08 shortfall as it does for the 06/07 shortfall.”¹⁴

It is clear that the Board reduced the interest rate on outstanding balances by one-half due to the late filing of the 2006/07/08 GRA. It should be further noted that the recovery of the remaining balances in the GRA shortfall represents one of the major reasons why some communities exceed the 15% cap on rate and rider increases and has led to the BR-NTPC-1 Proposal to recover the Balance Remaining Fuel Rider from all communities. The Hydro Communities submit that the shortfalls would have been materially less had the 2006/07/08 GRA been filed earlier thus avoiding the compounding collection of GRA and Fuel/Water shortfalls.

NTPC goes on to suggest that it ought to receive interest on outstanding shortfall balances at a rate of the Prime Business Rate less 50 basis points because the 18 month collection period strains its access to short term financing. NTPC exaggerates this situation when it claims that it is applying to collect \$15.4 million of short term receivables as at October 1, 2008. The decrease in diesel fuel prices will virtually eliminate the \$5.8 million required to “keep-up” with fuel price increases. Further, the HC have disputed the inclusion of the fuel costs related to the Bluefish capital improvements in the amount of about \$1.8 million. These two adjustments would significantly reduce the October 1, 2008 short term receivables. Finally, the remaining balances after these adjustments will have been reduced to about one-third by October 2009 assuming an 18 month shortfall recovery period for most communities.

¹³ Decision 16-2008, page 13

¹⁴ Decision 16-2008, page 15

7. STANDARD DATES FOR STABILIZATION FUND APPLICATIONS

As noted in Argument, the HC support the updating of fuel prices, fund balances and the resultant riders on a regular 6 month basis.¹⁵ Regular updating of the various fuel and water stabilization riders may mitigate the large increases now being faced by customers.

8. STAND-BY RATE PROPOSAL

The Hydro Communities do not have anything to add to their Argument.

9. TERMS AND CONDITIONS OF SERVICE

NTPC has proposed changes to Sections 4.1, 13.2 and 14.1 of its Terms and Conditions of Service. The HC have fully addressed these changes in its Argument.¹⁶

10. OTHER MATTERS

The HC have no comments.

11. CODE OF CONDUCT REVIEW

As noted in Argument at page 16 and following, the Hydro Communities have addressed the Policy Guidelines and Code of Conduct for Affiliated Transactions in the context of their impact of the Twin Gorges Hydroelectric Generating Station on existing regulated customers. NTPC has not raised anything new in this regard in its Argument which summarized the application and Information Responses and thus no Reply is required.

The Hydro Communities share a number of concerns expressed by the TGC in their Argument. At page 4, the TGC express concern that the Code of Conduct does not

¹⁵ Argument, page 9

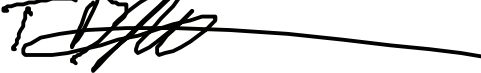
¹⁶ Argument, pages 13-14

include any substantive content to ensure that inter-affiliate transactions “do not negatively impact upon regulated ratepayers.” As noted in the HC Argument at page 17, the Code of Conduct should also ensure “that all services are provided by NTPC to its unregulated affiliates should be at fair market value” rather than just do not negatively impact regulated ratepayers.

All of which is respectfully submitted this 21st day of October, 2008.

Brownlee LLP, Counsel for the Hydro Communities

Thomas Marriott
Tue Oct 21 15:07:44 2008

A handwritten signature in black ink, appearing to read 'T. Marriott', with a long horizontal line extending to the right.

Per:
Thomas D. Marriott