

Northwest Territories Power Corporation

**2006-2007 and 2007-2008 Phase 2 GRA and
Code of Conduct Review**

**REPLY ARGUMENT
SUBMITTED ON BEHALF OF THE**

**THERMAL GENERATION COMMUNITIES [TGC]
COMPRISED OF**

**TOWN OF INUVIK
VILLAGE OF FORT SIMPSON
HAMLET OF FORT LIARD**

October 21, 2008

INDEX

1. INTRODUCTION 3

2. COMMENTS ON NTPC’S PHASE 2 GRA ISSUES 3

 2.1 PROPOSAL TO CONSOLIDATE BALANCES IN STABILISATION RIDER
 BALANCES 3

3. CODE OF CONDUCT REVIEW 6

1. INTRODUCTION

This Reply Argument is submitted on behalf of the Town of Inuvik, Village of Fort Simpson and the Hamlet of Fort Liard, collectively referred to as the Thermal Generating Communities or TGC.

The TGC has received and reviewed submissions filed on behalf Northwest Territories Power Corporation (NTPC) and the Cities of Yellowknife, the Town of Hay River and Town of Fort Smith (the Hydro Communities). While the TGC believes its Argument filed October 14, 2008 provides a comprehensive discussion of its position on each of the issues raised, certain matters raised in parties' arguments require comment. Issues fully addressed in the TGC Argument and not requiring further comment have not been addressed in this Reply. Further, silence on any issue should not be construed as agreement with the position of any party in this proceeding.

2. COMMENTS ON NTPC'S PHASE 2 GRA ISSUES

2.1 PROPOSAL TO CONSOLIDATE BALANCES IN STABILIZATION RIDER BALANCES

The HC argue against the proposal advanced by NTPC in its response to BR.NTPC1 (a and c)¹. Among other things, the HC take issue that there was no opportunity to test the increases to the hydro communities and that the introduction of new evidence is not consistent with the GRA, or with the Board's prior practice regarding rate zones.

While the Board in prior NTPC decisions has set rates by rate zones, there are a number of unique and extraordinary circumstances in the current 2006/08 Phase 2 GRA which warrant a departure from continuation of the strict adherence to the prior Board-approved

¹ That is, to crystallize all fuel balances as at October 31, 2008 (including the Snare-YK water fund in excess of the trigger level) and "charge all customers on the system (including industrial and wholesale including NUL (NWT) on an equal cents/kW.h basis over 17 months...The levelized rider to be applied is 1.62 cents/kW.h." [NTPC Argument, page 9]

community-based cost of service approach. These unique and extraordinary circumstances require the Board to take innovative approaches to deal with the resulting rate spikes to communities in the diesel zone. We note that in addition to some \$8.383M remaining outstanding as at September 30, 2008 in respect of combined 2006/07 and 2007/08 revenue shortfalls, there is a massive amount of the shortfall already accumulated (“catch up” amount) and expected to build up (“keep up” amount) in the diesel fuel stabilization account.²

While the prices for the world oil prices have decreased in recent weeks, and should result in a reduction to the “keep up” amounts, there continues to be significant uncertainty in the global markets which will continue to make the fuel prices very volatile. As noted in the TCG Argument [page 12], while the “keep up” portion of the proposed recovery should be based on the most recent fuel price forecasts, the extreme uncertainty and volatility in world oil prices suggest there could be significant swings in the price of fuel. While the NTPC-proposal to undertake a 6-monthly review may have the effect of self-correcting any significant errors in the “keep up” portion of the fuel forecast, there is no argument the current fuel markets are experiencing “extraordinary” pressures and cannot be predicted accurately.

While the HC complaints about the inequity of the hydro zone having to bear a share of the diesel expense, the TGC note the diesel communities area also being asked to pick up a share of the of hydro communities shortfall; more specifically, Response BR.NTPc-2 (b) Attachment 1 demonstrates that of the total “pooled balance” of \$7.8M, about \$3.7M, or 47%, is in respect of the hydro communities’ fuel balances.³ The cross-subsidy is therefore not a one-way street.

² For example, based on the data provided in Schedule C.1 of the Phase 2 GRA Filing, the diesel fund deficiency in respect of the price variance (“keep-up” amount) is some \$5.1M and the net amount in respect of the expenses already incurred (i.e. the “catch-up” amount) is \$2.4M as at September 30, 2008. The total projected deficiency in fuel therefore is some \$7.5M, or about 66% of the total \$11.3M diesel fuel costs (including diesel required for hydro) included in the 2007-08 Revenue Requirement (see schedule 3.3.2, 2006/08 Phase 1 GRA, Second Refiling).

³ YK Fuel fund of \$1.5M, YK Water Fund of \$2.1M and Fort Smith Fuel Fund of \$0.1M

The Board has in the past deviated from the criteria of no cross subsidy between communities under certain conditions. For example, in the NUL (NWT) 2005-2006 Phase 2 GRA Decision 9-2006, the Board found:

The Board agrees that the subsidies provided to the diesel communities, and Dory Point/Kakisa in particular, in the interest of maintaining rate stability in the subsidy receiving communities, should be borne proportionately by all subsidy-providing communities. Accordingly, the Board directs Northland to design the proposed 2005 and 2006 rates for Hay River and Fort Providence so that the entire amount of dollars required to subsidize the remaining diesel communities, after the application of the 10% rate cap to those communities, is recovered from Hay River and Fort Providence proportionate to each community's forecast of revenues in each year. [Decision 9-2006, Page 51]

Also, as noted by NTPC⁴, other regulators have also deviated from normal rate design criteria i.e. by implementing an across-the-board increase to all rate classes, when faced with extraordinary circumstances.

It also appears to the TGC the move to a common rate, i.e. a common fuel rate in this case, addresses some significant concerns expressed in the NWT legislative assembly in respect of the high power rates in the diesel/thermal communities⁵.

The HC also argue NTPC's proposal will increase the rates and riders applicable to Yellowknife and will result in residential bills in all other communities being increased as the support level under the TPSP will increase⁶. While this may be the result, it is interesting to note NTPC has endorsed the alternative proposal advanced in Response BR.NTPC-1 and did not advance the availability of TPSP as an excuse for not moving forward with the alternate proposal. In our view, the level and structure of the TPSP is outside of the Board's jurisdiction. As well, there is no evidence to indicate if the GNWT will automatically increase the TPSP threshold price. Even if it did, there is no evidence

⁴ NTPC Argument, Page 12

⁵ Response TGC.NTPC-GRA-2 (a), Hansard pages 459-465

⁶ HC Argument, Page 6

that the savings to Residential customer rates in thermal communities under the alternate proposal will not offset the increase in the TPSP support level, if any,

For all of the foregoing reasons, the TGC submit there is significant merit in adopting the alternative proposal advanced in Response BR.NTPC-1.

3. CODE OF CONDUCT REVIEW

The TGC has reviewed the Argument of HC⁷ and note that the HC have provided some specific examples of the areas where an affiliate appears to be not only in direct competition with NTPC, but also is providing service that NTPC is well capable of providing. These are issues which have been of concern to the TGC, as expressed both in evidence at the Phase 1 proceedings⁸, but also in Argument in the current NTPC Phase 2 proceeding.⁹

NTPC maintains it does not need an ATCO type inter affiliate code of conduct as “the scale and volume of inter-affiliate transactions simply are not at all comparable between NTPC and ATCO.”¹⁰ However, in our submission, the volume of transactions is not determinative of the type of a code of conduct. The Alberta regulated utilities have, without exception, adopted the ATCO inter-affiliate code of conduct approved in Decision 2003-040. Where necessary, in order to meet their specific circumstances,

⁷ HC Argument, Pages 14-17

⁸ In addition to the issues cited by HC related to the Twin Gorges expansion, the TGC evidence provided the following additional example:

Without adequate checks and balances to ensure transactions with affiliates are transparent and will not impair the operations of the regulated entity, having the NTPC affiliates engaged in operations similar to those provided by the regulated arm can be problematic. As noted earlier, NWT Energy Corporation (03) Ltd. undertakes the operation, management and shared ownership of a residual heat project in Fort McPherson. NTPC also considers investment in district heating projects as a part of its mandate and long term vision. [TGC Phase 1 evidence, Pages 3-4]

⁹ TGC Phase 1 evidence, Page 4; TGC Phase 2 Argument, Pages 5-7

¹⁰ NTPC Argument, Page 25

utilities have filed for an application to be exempted from the application of a specific section or sections of the code.

In our view, NTPC has not addressed how its inter-affiliate code of conduct will prevent the possible misalignment of interests between shareholders and customers. The Board should direct NTPC to refile its inter-affiliate code of conduct having in mind the following purpose and objectives:

Purpose of the Code

The purpose of this Code is to establish standards and conditions for interaction between each ATCO Utility and its Utility and Non-Utility Affiliates. This Code attempts to anticipate and adjust for the potential misalignment of interest between shareholders and Utility customers occasioned by Affiliate interactions through the establishment of parameters for transactions, information sharing and the sharing of services and resources, while permitting economies of scale and operating efficiencies.

These parameters are intended to:

- a) prevent Utilities from cross-subsidizing Affiliate activities;
- b) protect confidential customer information collected in the course of providing Utility services;
- c) ensure Affiliates and their customers do not have preferential access to Utility services; and
- d) avoid uncompetitive practices between Utilities and their Affiliates, which may be detrimental to the interests of Utility customers.

Objectives of Code

While the overall purpose of the Code is to establish standards and parameters which prohibit inappropriate Affiliate conduct, preferences or advantages, which may adversely impact the customers of regulated businesses, this purpose reflects several important underlying objectives, including:

- a) creating a clearly defined set of rules designed to enhance inter-affiliate transparency, fairness and senior management accountability with respect to inter-affiliate interactions impacting regulated businesses;
- b) providing 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) developing support and respect for the Code by the employees, officers and directors of the ATCO 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.¹¹

While the TGC recognize the ATCO code may not be optimum from NTPC's perspective, NTPC has an onus to review the key areas of the ATCO code and provide an assessment why the specific provisions of the ATCO Code do not apply or have no relevance to NTPC. In addition, the Board should direct NTPC to review the key findings in EUB Decision 2003-040 and similarly advise why these findings have no relevance or applicability to NTPC. Only then, in our view, will we have a comprehensive inter-affiliate code of conduct for NTPC.

Respectfully Submitted

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For the Thermal Generating Communities

October 21, 2008

¹¹ EUB Decision 2003-040, Pages 38-39