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	Monitor: President & CEO	No.: A-3
	Approval Date:	Effective Date: TBA

Policy:

The Boards and management of the Northwest Territories Hydro Corporation (NT Hydro) and the Northwest Territories Power Corporation (NTPC) and the Boards and management of the affiliates of these corporations will conduct business and make decisions based on the highest ethical and professional standards and minimize any potential for conflict of interest. In particular, the Boards and management shall conduct business and make decisions in a manner which considers and safeguards the interests of each corporation. Inter-corporate activity and transactions shall be transparent and adhere to applicable inter-company generally accepted accounting principles and NTPC's inter-affiliate code of conduct as approved by the Public Utilities Board (PUB).

Discussion:

Section 4(3) of the *Northwest Territories Power Corporation Act (NTPC Act)* provides that NT Hydro owns the common (voting) shares of NTPC making the NTPC a subsidiary of NT Hydro. Section 8(1) of the *Northwest Territories Hydro Corporation Act (NT Hydro Act)* provides that the Board of Directors of the Northwest Territories Power Corporation is designated as the Board of Directors of the NWT Hydro Corporation. Similarly, Section 13(1) of the *NT Hydro Act* designates the President of NTPC as the President of NT Hydro. Several other of NT Hydro's indirect subsidiaries share the same Board of Directors and have overlapping management as NT Hydro and NTPC

Common directors and officers of the parent company (NT Hydro) and its subsidiaries (NTPC, NWT Energy Corporation (03) Ltd., Sahdae Energy Ltd. and others) must always be cognizant of, and act appropriately with respect to their fiduciary duties owed to each entity. Case law and best practices require, "[d]irectors, in each case, to act in the best interests of the relevant company. When making decisions for the subsidiary the directors must act in the best interests of the subsidiary. They must not set aside the subsidiary's interests for the parent's agenda".¹ The same best practices also apply to common officers.

Section 76(1) of the *Public Utilities Act* requires that "[a] public utility shall provide safe, adequate and proper service and keep and maintain its property and equipment so that the public utility can provide the service." The *NTPC Act* and the *NT Hydro Act* establish the objects of NTPC and NT Hydro, respectively, to

¹ STP Director's Liability in Canada – Liabilities Relating to Corporate Law, page 1-55

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generate, transform, transmit, distribute, deliver, sell and supply electricity on a safe, economic efficient and reliable basis.

The combined requirements of the foregoing provisions impose a “quality of service” obligation on both NTPC and NT Hydro that must also be adhered to by the respective Boards of Directors and management.

It is also recognized that the PUB may review and approve costs incurred by and charges for service levied by any public utility falling under its jurisdiction that is not otherwise declared to be exempt by PUB order or excepted by statute.

Other sources of requirements governing the Boards of Directors and management include the *Conflict of Interest Act*, the *Financial Administration Act*, the *Access to Information and Privacy Act* and the *Public Service Act*, as well as directions issued from time to time by the Executive Council pursuant to Section 8(4) of the *NTPC Act* and Section 9(2) of the *NT Hydro Act*.

Directive:

The following factors shall be considered by the Boards of Directors and management when determining what is in the best interests, in each case, of the parent and its subsidiaries, and what best meets its quality of service obligations, when determining which business activities should be undertaken by which entity.

1. Risk

Every business venture or activity contains an element of risk. Risk must be proactively identified and managed. Each corporate entity may have different risk tolerance. Generally, if a project/activity risk is high and the potential for downside to regulated rate payers significant, then the project/activity should be undertaken in a manner and by an entity that will not expose the regulated customers to a liability or cost should the project/activity be unsuccessful.

2. Legal Restrictions

If a corporate entity is legally restricted in legislation, its constating documents or any directions or policy guidelines that may from time to time be issued or established by the GNWT Executive Council from certain types of operations or business ventures (i.e. joint ventures or debt limits/guarantee restrictions), then the project would not be undertaken by that entity.

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3. Confluence

Where a project will likely converge with operations that serve regulated ratepayers, then the project/activity may be undertaken by entity serving those ratepayers (i.e. the project would be ultimately required to serve regulated customers and it is being advanced or expanded as a result of that opportunity).

4. Divergence

Where a project/activity diverges from or is unrelated to current or foreseeable service to regulated ratepayers, than such project/activity would be a candidate to be undertaken by a corporate entity that does not serve regulated ratepayers.

5. Access

Where a corporate entity serving regulated ratepayers does not have access to a particular business opportunity but another corporate entity not serving regulated ratepayers does, then the project/activity would be undertaken by the entity that could access the opportunity. For example, federal funding contributions often have conditions that cannot be met by a Crown corporation or regulated entity. Similarly, or a joint venture partner may not be willing to do business in a manner that results in regulation of it or its investment.

6. Leverage and Majority Position

In cases where a project/activity requires extensive third party equity, joint venture partners, or other forms of financing, such that the entity serving regulated ratepayers is not in a majority (control) position, then it may be necessary to pursue the project/activity through a corporate entity not serving regulated ratepayers.

7. Project Permit

In the event a project/activity is intended to be pursued by the entity serving regulated ratepayers, but a project permit is denied by the PUB, the project/activity may then be pursued by an entity not serving regulated ratepayers.

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8. Transparency

In addition to the foregoing factors, the following principles will guide NT Hydro and its subsidiaries with respect to inter-company transactions:

- i. All inter-company transactions shall be fully transparent and compliant with NTPC's inter-affiliate code of conduct as approved by the Public Utilities Board.
- ii. It is understood that NT Hydro and its subsidiaries shall have the right to manage their affairs but accept that the regulated operations must demonstrate to the satisfaction of the PUB that all inter-company transactions involving regulated operations are prudent and compliant with NTPC's inter-affiliate code of conduct as approved by the Public Utilities Board.