

May 11, 2017

Via email: sallerston@mvlwb.com

Via fax: 867.873.6610

Mackenzie Valley Land and Water Board

7th Floor, 4922 - 48 Street

P.O. Box 2130

Yellowknife, NT X1A 2P6

**Attention: Shannon Allerston, Regulatory Officer
Board Members**

Dear Sirs and Mesdames:

Re: NPTC v. Carters – Taltson Compensation Re-Hearing
File No.: 028628-0004

We are writing further to the Northwest Territories Power Corporation's (NTPC) May 10, 2017 correspondence and to request that the Mackenzie Valley Land and Water Board (Board) provide direction with respect to the scope of evidence to be considered at the re-hearing.

The Elder's Proposed Evidence

The purpose of the re-hearing is to provide the Carters with the opportunity to respond to NTPC's submissions of April 23, 2012. The Carters wish to emphasize that Elder Boucher will not be providing any new evidence. The Carters simply request that Elder Boucher be permitted to speak briefly regarding evidence that is already part of the record. NTPC has been aware throughout the proceeding that the Carters' presentation will relate to the ongoing and adverse impacts to Nonacho Lake resulting from NTPC's continued operations. NTPC will be able to address Elder Boucher's evidence by asking him questions about it, if they choose to do so.

The Scope of the Re-Hearing

However, NTPC's correspondence raises an important issue that we have tried to address earlier: the scope of evidence to be considered at the re-hearing.

During the conference call of February 10, 2017, with counsel for the Board and counsel for NTPC, we requested direction from the Board regarding the scope of evidence that would be considered at the re-hearing. Counsel for the Board advised that it was not a position to provide any direction regarding the scope of evidence. Counsel for NTPC took the position that no new

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evidence ought to be considered. Based on this representation, we instructed our experts to consider only evidence that was available in 2012.

As a result, we were surprised to see the inclusion of new evidence in NTPC's submissions of April 18, 2017. For example, NTPC appends a Nonacho Spillway Operations Log with information relating to 2016 and a report regarding the recreational sport fishing industry in the Northwest Territories prepared in 2014. NTPC also includes references to "recent sale transactions and offerings in the NWT marketplace for operations comparable to Nonacho Lake Fishing Lodge."¹ This evidence was not, and could not have been, before the Board in 2012.

The purpose of the re-hearing is to provide the Carters with the opportunity to respond to NTPC's submissions of April 23, 2012. Pursuant to the Board's Rules of Procedure, NTPC's participation in the hearing is intended to reply to the Carters' written submission.² Instead, NTPC has engaged in case splitting and introduced new evidence that the Carters are now unable to respond to. At the initial hearing, the NTPC submitted evidence in the form of the Cambria Gordon report, which the Carters were not permitted to respond to. Our concern is that the Carters are being placed in a similar situation with respect to the re-hearing.

We request that the Board provide direction regarding the scope of evidence that it will consider at the re-hearing. Will the Board consider the new evidence submitted by NTPC, or will the Board limit its consideration to evidence that would have been available in 2012? Or is this a matter that should be dealt with by the Board when the proceedings commence on May 16, 2017?

We look forward to your advice and direction regarding the foregoing.

Yours truly,

MLT AIKINS LLP

Per:

FOR' 
Eleanor A. Olszewski, Q.C.

EAO:fl

cc: Doug Evanchuk & Sean Parker, Counsel for NTPC
Sheldon Toner & Caroline Wawzunek, Counsel for MVLWB

¹ Submissions of NTPC (18 April 2017) at 35-36.

² Mackenzie Valley Land and Water Board, Rules of Procedure including Public Hearings (January 14, 2004), r 54; *Carter v Northwest Territories Power Corp*, 2014 NWTSC 19 at paras 103-106.

From: [Shannon Allerston](#)
To: [Permits](#)
Subject: FW: NTPC v. Carters - Taltson Compensation Re: Hearing Agenda
Date: Friday, May 12, 2017 8:43:52 AM
Attachments: [image003.png](#)
[Letter to Mackenzie Valley Land and Water Board May 11, 2017.pdf](#)

MV2011L4-0002 – Letter from Carter Family Counsel Regarding Scope of the Compensation Claim Re-Hearing

From: Richelle B. Bergquist [mailto:RBergquist@mltaikins.com]
Sent: May-11-17 2:10 PM
To: Shannon Allerston
Cc: Amanda Gauthier; 'Sean Parker'; 'Doug Evanchuk'; 'sheldon@dragontoner.ca'; 'caroline@dragontoner.ca'; Eleanor Olszewski; Jessica Buhler
Subject: NTPC v. Carters - Taltson Compensation Re: Hearing Agenda

Good afternoon Shannon,

Please see attached correspondence sent on behalf of Eleanor Olszewski.

Regards,

Richelle Bergquist

Legal Assistant

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