

Motion to the Gwich'in Land and Water Board

Rule 22

NWT ENERGY CORPORATION (03) LTD. - G18X005 G18L8-001

Filed by Nihtat Gwich'in Council

December 4, 2019

This motion is made pursuant to Rule 22 and Rule 61 of the *Land and Water Board Rules of Procedure*. Nihtat Gwich'in Council ("NGC") is seeking a Directive from the Board to require NWT Energy Corporation (03) Ltd. ("NTEC") to provide particulars in respect of their claim to have a right to occupy land and to be eligible to receive permits in accordance with s. 18(b) of the *Mackenzie Valley Land Use Regulations*.

1. NTEC has made application for a Type "A" Land Use Permit and a Type "B" Water Licence for water use during project construction for the purpose of constructing, operating and maintaining a wind turbine, and all season access road, powerlines, and associated electricity infrastructure at Highpoint, near Inuvik.
2. On December 2, 2019, NTEC submitted a letter to the Board stating on page 2 that "the proposed Project falls within the *Land Withdrawal Order (Reindeer Grazing Reserve) R-065-2014*. the proposed Project is on Commissioner's Land reserved for NTEC use, is not considered a disposition under the Land Withdrawal and so can proceed on the proposed site."
3. NTEC's December 2, 2019 assertions in respect of the lands required for the proposed Project do not appear to be supported in fact or in law.
4. The record to date includes:
 - (a) a letter dated 1 October 2019 from Deputy Minister W. Hagen (Lands) to Deputy Minister P. Guy (Infrastructure), noting a "request dated September 27, 2018 letter for an amendment to reserve 107B07-172 has been forwarded to the Land Administration Division for action". The letter further notes "that the proposed area crosses both Commissioner's and Territorial Lands."
 - (b) The Board's March 15, 2019 *Reviewer Comment Table*, which contains the following statements in respect of land tenure:
 - (i) Department of Lands: There is an existing Reserve (107B/7-172) at the site belonging to the GNWT - Department of Infrastructure (Proponent) which covers a 50 m² block of land. In this application the Proponent is the NWT Energy Corporation and they've applied for up to a 100 m² block of land disturbance. Herbert spoke to Shelley Hauck from Lands in YK and she indicated that there would have to be an amendment on the current Reserve 107B/7-172 in order for the project to carry on in that area. She also indicated that there might be a community consultation for that amendment to occur.
 - (ii) NTEC: The project is located on Commissioner's land. NTEC has been working with the Department of Lands to finalize the land reserve held by the Department of Infrastructure, on behalf of NTEC. NTEC is a crown corporation that is wholly

owned by the GNWT and the project is located on Commissioners Land; therefore, it is NTEC's understanding that no access agreement is required for the project.

5. The *Land Withdrawal Order (Reindeer Grazing Reserve)*, R-065-2014 (“*Land Withdrawal Order*”) made pursuant to the *Northwest Territories Lands Act*, S.N.W.T. 2014, c.13, which provides the Commissioner in Executive Council with the power to authorize the disposition of territorial lands including ordering the withdrawal of lands (s. 19(a)) and setting apart and appropriating territorial lands for the use of game preserves and/or sanctuaries (s. 19(e)). The *Land Withdrawal Order* specifically withdraws from disposal certain tracts of territorial lands, including the Project Area, and sets apart and appropriates those tracts for use as a reindeer grazing reserve. The *Land Withdrawal Order* provides for exceptions to the prohibitions against disposal, including for the disposition of substances or materials under the *Quarrying Regulations* (s. 2(a)); interests in land to be used for public highways (s. 2(b)); mineral claims and interests under the *Petroleum Resources Act* and mining regulations (s. 3); or the renewal, amendment or consolidation of an interest (S. 3(f)). None of these exceptions apply to the Project.

Motion sought by NGC

6. NGC requests the Board to issue a Directive to NTEC to respond to NGC on the record to the following Information Requests:
 - (a) NTEC to provide evidence or lawful authority that the proposed Project is on Commissioner’s Land;
 - (b) NTEC to provide evidence or lawful authority that the proposed Project area is reserved for NTEC use;
 - (c) NTEC to provide evidence or lawful authority that the reservation of the proposed Project Area is not considered a disposition under the *Land Withdrawal Order*; and
 - (d) NTEC to provide evidence or lawful authority that it has a right to occupy land and is therefore eligible to receive a permit in accordance with 18(b) of the *Mackenzie Valley Land Use Regulations*.
7. NGC further requests that NTEC’s Information Request be filed on the registry no later than December 10, 2019 so that NGC can respond by December 13, 2019 in advance of the Board’s December 17, 2019 meeting.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



Larry Innes

Counsel to Nihat Gwich'in Council