



November 10, 2023

Mr. Ryan Fequet  
Executive Director  
Wek'èezhì Land and Water Board  
1-4905 48<sup>th</sup> Street  
Yellowknife NT X1A 3S3

Dear Mr. Fequet:

**Maximum Term of a Type A Water Licence – Legal Interpretation – Type A Water Licence Renewal Application for W2023L4-0001 – Snare Hydroelectric Facility**

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On July 10, 2023, the Wek'èezhì Land and Water Board (WLWB) issued a review of the Water Licence Renewal Application, submitted by the Northwest Territories Power Corporation (NTPC) for the Snare Hydroelectric Facility (W2023L4-0001). In review of the Application, Government of the Northwest Territories Department of Environment and Climate Change (GNWT-ECC) recommended that the term of the renewed type A Water Licence be 25 years at most based on the provisions of the *Waters Act*. The WLWB identified this to be a legal interpretation issue and following the Technical Session for the Application, issued an Information Request (IR) to GNWT-ECC to further clarify its interpretation on the maximum term of a type A Water Licence under the *Waters Act*. GNWT-ECC provided a response to the IR on October 5, 2023 and subsequently on October 6, 2023, WLWB issued a general review of GNWT-ECC's response to the IR to any interested party, including parties to the current Proceeding as well as those not currently parties or participants in the Proceeding. In issuing GNWT-ECC's response to IR for general review, the WLWB did not provide an opportunity for GNWT-ECC to reply to comments. As a lack of opportunity to reply to response submissions would be procedurally unfair, GNWT-ECC makes the following request to the WLWB.

GNWT-ECC respectfully requests that the WLWB consider GNWT-ECC's reply submissions set out in our Intervention to the response submissions that have been provided by the Thìchò Government (TG) and NTPC regarding the general review of GNWT-ECC's legal position on the maximum term for a type A water licence under the current *Waters Act* and *Waters Regulations*. An opportunity for GNWT-ECC to reply, with GNWT-ECC reply submissions considered by the WLWB before it makes its decision on this issue, is required under Mackenzie Valley Land and Water Board's (MVLWB's) Rules of Procedure Including Public Hearings (2018) and is otherwise legally required to provide procedural fairness to GNWT-ECC.

The MVLWB's Rules of Procedure Including Public Hearings, which the WLWB has adopted as its rules of procedure, presumably apply to any such general review process. This is because the process that occurs regarding a general review of a party's legal position is analogous to that which occurs regarding a request for ruling, so the same rules should apply. In both this case and a request for ruling, (i) a position and submissions of one party are set out and posted on the Online Review System, (ii) other parties have the opportunity to respond, and (iii) the applicable land and water board will make a ruling on the issue at the end of the process. Rule 27 indicates that the party that filed the request for ruling shall be given the opportunity to reply to the responses of other parties. On this basis, GNWT-ECC must be given the same opportunity for this general review item to reply to the responses of other parties that is provided in a request for ruling.

GNWT-ECC must also be given the opportunity to reply to TG's and NTPC's submissions to provide procedural fairness to GNWT-ECC. The general item that the WLWB circulated for review was originally a response by GNWT-ECC to an IR from the WLWB. GNWT-ECC did not know that the WLWB would opt to turn its response to that IR into a general item for review on the Online Review System. GNWT-ECC responded to the IR from WLWB on the understanding that:

- (i) other parties to NTPC's Snare Hydro Type A Water Licence Renewal would have the opportunity to respond in their Intervention in the context of that process and would need to do so if they disagreed with GNWT-ECC;
- (ii) GNWT-ECC would, at minimum, have the opportunity in its written Closing Argument to reply to the responses of any parties set out in their Interventions on that issue; and
- (iii) WLWB would then make a decision on this issue as part of its full decision on the Licence Renewal Application.

As such, GNWT-ECC had no reason to attempt to anticipate or respond to counterarguments that might be made by other parties in its IR response. If the WLWB intended to carry out a process with no reply opportunity that GNWT-ECC would normally have in the specific process, it was incumbent on the WLWB to inform GNWT-ECC of that when the IR was provided to GNWT-ECC. As the WLWB did not do so, the WLWB is now obliged to give GNWT-ECC the opportunity to reply to TG's and NTPC's responses to the general review item via some means and give consideration to GNWT-ECC's reply before the WLWB makes its decision on this issue.

GNWT-ECC has replied to TG's and NTPC's responses on the general review item through its Intervention for NTPC's Snare Hydro Type A Water Licence Renewal. However, GNWT-ECC respectfully requests and expects WLWB to consider the reply submissions in whatever context(s) it will be making a decision on this issue – the general review item and/or NTPC's

Type A Water Licence Renewal If WLWB will not do so, please reply to inform me without delay.

If you require further information, please contact Rick Walbourne, A/Director, Regulatory and Permitting at [Rick Walbourne@gov.nt.ca](mailto:Rick.Walbourne@gov.nt.ca).

Sincerely,



Rick Walbourne  
A/Director  
Regulatory and Permitting  
Environment and Climate Change