

**PUBLIC UTILITIES BOARD
OF THE NORTHWEST TERRITORIES**

ANNUAL REPORT

**For the year ending
December 31, 2010**

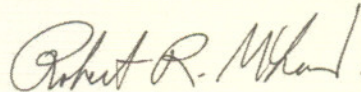
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February 01, 2011

The Honourable George Tuccaro
Commissioner of the Northwest Territories

I am submitting the Annual Report of the Public Utilities Board of the Northwest Territories for the calendar year ending December 31, 2010.



Robert R. McLeod
Minister

Attachment

February 01, 2011

The Honourable Robert R. McLeod
Minister Responsible for the
Public Utilities Board of the Northwest Territories

Dear Minister McLeod:

I am pleased to submit the Annual Report of the Public Utilities Board of the Northwest Territories for the calendar year ending December 31, 2010, in accordance with the provisions of Section 16. (1) of the *Public Utilities Act*.

Yours truly,



Joe Acorn
Chairperson

PUBLIC UTILITIES BOARD OF THE NORTHWEST TERRITORIES

Mandate

The Public Utilities Board of the Northwest Territories (“**Board**”) is an independent regulatory agency of the Territorial Government operating under and administering the *Public Utilities Act* (“**Act**”). The Board is primarily responsible for the regulation of energy utilities in the Northwest Territories (“**NWT**”), to ensure that the rates charged for energy are fair, just and reasonable. It is also responsible for ensuring utility operators provide safe, adequate and secure services to their customers.

Board Organization

The Board consists of a part time Chairperson and four part time members. The position of Chairperson has been part time since April 1, 2001. The Board Secretary, who reports to the part time Chairperson, administers the office. As the chief executive officer, the Chairperson presides over sittings of the Board and supervises Board employees.

The Board requires specialized assistance and so has contracts for legal counsel and technical expertise. No changes are contemplated, as the arrangement is cost effective.

The Minister Responsible for the Board, upon the recommendation of the Executive Council, appoints members of the Board. At the end of 2010, the Board consisted of the following persons:

Chairperson	Joe Acorn, Yellowknife, Northwest Territories
Vice-Chairperson	Sandra Jaque, Fort Smith, Northwest Territories
Member	William Koe, Fort McPherson, Northwest Territories
Member	Jake Heron, Yellowknife, Northwest Territories
Member	Peter Guthrie, Norman Wells, Northwest Territories

The Board was assisted by:

Board Secretary	Louise Larocque, Hay River, Northwest Territories
Legal Counsel	John Donihee Professional Corporation, Calgary, Alberta
Consultant	Raj Retnanandan, Energy Management & Regulatory Consulting Ltd., Calgary, Alberta

REGULATORY JURISDICTION

Following are the utilities subject to the Board's jurisdiction:

Northwest Territories Power Corporation
Head Office: Hay River, Northwest Territories

Stittco Utilities NWT Ltd.
Head Office: Hay River, Northwest Territories

Northland Utilities (NWT) Limited
Head Office: Hay River, Northwest Territories

Northland Utilities (Yellowknife) Limited
Head Office: Yellowknife, Northwest Territories

The Town of Norman Wells
Head Office: Norman Wells, Northwest Territories

Aadrii Ltd.
Head Office: Yellowknife, Northwest Territories

Inuvik Gas Ltd.
Head Office: Inuvik, Northwest Territories

UTILITY REGULATION

The need for regulation arises because utilities generally provide service on a monopoly basis without the economic controls of competition. The Board is the proxy for competition and attempts to ensure efficiency and fair pricing. The principles of rate regulation rest on fairness to both the utility and the consumer.

Energy utilities, as defined in the *Act*, are subject to Board regulation. The Board's principal responsibility is to ensure that each utility provides safe, adequate service at rates which are just and reasonable. When setting rates the Board must balance the competing interests of consumers, and the utilities. Rates are set through a public hearing process. The Board's objective through the hearing process is to guarantee that the public interest is served and protected.

Public involvement is an essential component of the regulatory process. The Board ensures the opportunity for public participation by directing the applicant to publish a notice, approved by the Board, advising that a hearing is to be held to consider the application. The notice may be published in newspapers throughout the utility's service area, included in each customer's monthly billings, or such other method that the Board considers appropriate.

The Board has the authority to award costs at the conclusion of a hearing. Interveners before the Board may receive up to 100% of their reasonably incurred costs provided that, in the Board's opinion, the intervention contributed in a meaningful way to the Board's understanding of the application.

Interveners are interested parties who register with the Board and receive copies of the application and all written questions and answers.

Interveners may take an active role in the hearing process. They may submit written questions, give evidence, call expert witnesses, and cross-examine the applicant. The applicant, as well as other interveners, is provided the opportunity to cross-examine the intervener and the intervener's expert witnesses. Alternatively, the intervener may choose to not actively participate in the hearing, but simply receive all available information.

After hearing and reviewing the evidence, the Board issues its Decision on the application. The Board may reject the rate change, modify it, or approve it as requested.

The Board also approves major capital projects, the issuance of long-term debt and municipal franchise agreements.

2010 HIGHLIGHTS

Northwest Territories Power Corporation and Northland Utilities Limited (collectively "***Utilities***")

By letter dated April 13, 2010, the Utilities with support from the Department of Environment and Natural Resources ("**ENR**"), submitted a proposal for a Net Billing Pilot Project. The Utilities indicated the purpose of this project is to test the feasibility and logistics of having system connected customers, with acceptable renewable energy generation to meet some or all of their own electrical needs through self generation and sell any excess energy into the grid. Also included with the proposal was a letter, dated April 9, 2010, from ENR to provide written confirmation of their support of the Project and indicate ENR's intention to participate as a partner in this initiative.

After reviewing the application and other information filed, the Board, in Decision 13-2010, dated September 10, 2010, approved the request by the Utilities to undertake a Net Billing Pilot Project subject to the directions and comments from the Board contained within this Decision.

Northwest Territories Power Corporation ("NTPC")

On May 14, 2010, the Government of the Northwest Territories ("**GNWT**") released a report entitled "*Efficient, Affordable and Equitable: Creating a Brighter Future for the Northwest Territories' Electricity System*". The report is intended to guide policy with respect to the future approach to the NWT electricity system.

On July 9, 2010, the Board received a letter from the Minister Responsible for the Public Utilities Board, Robert R. McLeod, indicating the Executive Council had approved Electricity Rate Policy Guidelines ("**Guidelines**") for consideration by the Board.

In a letter dated July 26, 2010 to NTPC, the Board stated that it accepted the Guidelines as directives from the Executive Council under Section 14(1) of the *Act* and would implement these directives in accordance with s. 14(2). The Board also stated that it was using the authority it holds under Sections 20 to 22 of the *Act* to initiate a hearing and directed NTPC to file with the Board an application to implement the directives from the GNWT.

By letter dated August 13, 2010, NTPC filed an Application with the Board to implement the Guidelines. Following a written hearing process, the Board issued Decision 16-2010 dated November 12, 2010 addressing all matters arising from NTPC's Application to implement the Guidelines and providing directions to NTPC to refile its Application.

By letter dated November 25, 2010, NTPC re-filed its Application.

After reviewing the schedules and information provided by NTPC, the Board, in Decision 17-2010, dated November 29, 2010, approved the rate schedules, as interim rates, effective December 1, 2010. The existing rate stabilization fund riders and shortfall riders were terminated effective December 1, 2010.

Northland Utilities (Yellowknife) Limited and Northland Utilities (NWT) Limited (collectively "Northland")

Review and Variance of Board Decisions 24-2008 and 25-2008

Northland, by letters dated January 9, 2009 applied for Review and Variance of Board Decisions 24-2008 and 25-2008 (**R&V Applications**). Since the issues in both Applications were identical, the Board, in a letter dated January 26, 2009, indicated it would deal with the Applications in a combined process.

By letter dated March 4, 2009, Counsel for Northland requested the conclusion of the proceeding be deferred pending the outcome of a related matter that was then before the Alberta Utilities Commission's (**AUC**). Northland stated the interveners' (YK-HR-FP) arguments rely heavily upon findings in the context of AUC Decision 2008-113, to support a variety of the positions being advanced in their argument. Following the receipt of the AUC's Decisions regarding this matter, Northland stated its intention was to move forward with its R&V Applications or withdraw them, depending upon the ultimate disposition of the matter before the AUC.

By letter dated March 6, 2009, the Board agreed to defer the reply argument in accordance with Northland's request.

On November 12, 2009, the AUC rendered Decision 2009-215, with respect to ATCO Electric Limited's regulatory treatment of income tax refunds arising from certain additional tax deductions claimed for past years. Northland submitted, in Decision 2009-215, the AUC considered itself bound by the principle against retroactive rate making. Having regard to Decision 2009-215, Northland, by letter dated December 18, 2009, requested that the Board continue the proceedings with respect to the R&V Applications.

As per the schedule established by the Board, Northland filed a revised R&V Applications on January 18, 2010.

After reviewed the information filed by all parties, the Board concluded that Northland has not demonstrated an obvious or probable error of law or fact exists. The Board issued Decision 4-2010, dated March 24, 2010 dismissing Northland's Applications to review and vary Decisions 24-2008 and 25-2008.

Section 52 High Consumption Review

By letter dated June 30, 2010, Northland submitted its 2009 Deferral Account Application, as well as a joint application with respect to the Section 52 High Consumption Review.

In accordance with the Inquiry, under Section 52 of the *Act*, into the high consumption levels and subsequent Board Decision 17-2009 dated July 08, 2009, Northland submitted a joint Deferral Account Application for the disposal of costs incurred as a result of the Inquiry.

By letter dated August 4, 2010, the Board requested comments from parties with respect to Northland's deferral account and Section 52 High Consumption Review. YK-HR, by letter dated August 11, 2010, stated that it had reviewed the applications and took no exception with the 25 kV Project and Income Tax Deferral Account, however it did object to the recovery of the costs related to the Section 52 High Consumption Review. The Board set a schedule for interested parties to issued information requests related to the high consumption review on September 3, 2010 and for Northland to respond by September 10, 2010.

By letter dated September 14, 2010, the Board set a schedule to hear argument and reply argument from all parties. By letters dated September 24, 2010, Northland and YK-HR filed Argument and by letters dated October 1, 2010, Northland and YK-HR filed Reply Argument.

On November 24, 2010, the Supreme Court of the Northwest Territories ("**Supreme Court**") released a decision which dismissed the Board's Decision 4-2010 and vacating directions in Decisions 24-2008 and 25-2008 on the basis that the directions constituted retroactive ratemaking

In a letter dated December 21, 2010, the Board stated that it is interested in exploring how and if the Supreme Court decision should affect the Board's decision in dealing with the June 30, 2010 application from Northland. The basic finding of the Supreme Court decision was that the Board did not have the jurisdiction to order Northland to return to customers an unexpected amount of revenue that was received in a non-test year for which the rates were final. To do so would constitute retroactive ratemaking.

A corollary, but unstated, finding of the Supreme Court is therefore that the Board does not have the jurisdiction to order ratepayers to cover unexpected costs of Northland that were incurred in a non-test year for which the rates were final. Similarly, to do so would constitute retroactive ratemaking.

The Board stated that if the costs for which Northland is seeking recovery in the June 30th application falls within the corollary finding of the Supreme Court

decision, then the Board allowing recovery of those costs from the ratepayers would constitute retroactive ratemaking. As the Court decision was not available when the Board was accepting submissions on the June 30th application, the Board decided to reopen this proceeding to allow submissions on this matter prior to the Board issuing a decision.

The Board has received submissions from all parties on this matter and will be issuing a decision in 2011.

Other Matters

The Board dealt with other regulatory matters that are detailed in the decision summary.

Board members participated in the Annual Conference and Annual General Meeting hosted by the Canadian Association of Members of Public Utility Tribunals ("**CAMPUT**"). CAMPUT is the Board's primary resource for providing staff and Board members with training and education in areas of utility regulation.

Sandra Jaque, Board member, was appointed to Vice-Chairperson effective April 1, 2010. Peter Guther was appointed to the Board, effective September 9, 2010.

A LOOK AHEAD

As a result of NTPC's new rates only being approved on an interim basis as of December 1st, 2010, the Board is expecting an application from NTPC in February to convert the interim rates to final rates as of April 1st, 2011.

The Board expects that there will be other work related to full implementation of the GNWT report "*Efficient, Affordable and Equitable: Creating a Brighter Future for the Northwest Territories' Electricity System*" as well as the Electricity Rate Policy Guidelines such as the development of minimum filing requirements and amendments to the *Public Utilities Act*.

As for other regulatory proceedings, the Board is expecting 2011 to be a quiet year with no indications at this time that any General Rate Applications ("**GRA**") will be filed in 2011.

SUMMARY OF 2010 BOARD DECISIONS

DECISION 1-2010

February 19, 2010

Application:

By letter dated January 19, 2010, the counsel for the City of Yellowknife, Mr. Thomas D. Marriott, made an application to the Board for intervener costs with respect to the NTPC Project Permit Application to replace the Bluefish Lake Dam proceeding, in an amount of \$8,981.25.

By letter dated February 1, 2010, NTPC advised that they had reviewed the application and recommended the Yellowknife's cost claim be adjusted to exclude GST, a reduction of \$100.59.

The Board understands that the City qualifies for GST rebates. The City will be able to claim back as an input tax credit any GST paid to the City's Counsel and Consultants and so the Board did not include any GST amounts in the cost award.

Order:

The Board awarded costs in the amount of \$8,880.66 to the City of Yellowknife.

DECISION 2-2010

March 24, 2010

Application:

By letter dated February 8, 2010, Northland Utilities (NWT) Limited ("NUL NWT") filed an application to increase the existing Diesel Generation Rider (Rider I) for Hay River.

Order:

The Board reviewed the schedules and information provided by NUL NWT and approved the rate rider, effective April 1, 2010.

DECISION 3-2010

March 24, 2010

Application:

By letter dated March 10, 2010, NUL NWT filed an application to adjust the existing Fuel Clause Adjustment Rider (Rider A) for the community of Hay River, Fort Providence, Dory Point/Kakisa, Trout Lake and Wekweti.

Order:

The Board reviewed the schedules and information provided by NUL NWT and approved the rate rider, effective April 1, 2010.

DECISION 4-2010

March 24, 2010

Application:

Northland, by letters dated January 9, 2009 applied for Review and Variance of Board Decisions 24-2008 and 25-2008 (**R&V Applications**). Since the issues in both Applications were identical, the Board, in a letter dated January 26, 2009, indicated it would deal with the Applications in a combined process.

These applications and proceeding was already discussed in the highlights section of this report.

Order:

The Board, after reviewed the information filed by all parties, concluded Northland had not demonstrated an obvious or probable error of law or fact exists. Accordingly, the R&V Applications to review and vary Decisions 24-2008 and 25-2008 were denied.

DECISION 5-2010

April 26, 2010

Application:

By letter dated March 17, 2010, NTPC submitted an application requesting the Board to issue an Order exempting NTPC from certain requirements of the *Act* with respect to providing residual heating in the community of Fort Liard.

Order:

Pursuant to section 18 of the *Act*, the Board declared that the provisions of the *Act* do not apply to the provision of residual heat service for space or process heating in Fort Liard by NTPC as described in the March 17, 2010 application subject to certain conditions.

DECISION 6-2010

May 26, 2010

Application:

By letter dated April 30, 2010, NTPC applied to the Board for approval of a private placement of debenture, in an amount of \$50 million. NTPC advised that the Corporation's borrowing needs are dependent upon the extent of its upgrade and replacement capital program and its internal cash generation and do not necessarily fit into discreet fiscal year elements. Since the 2008 debt issue, NTPC repaid its first sinking fund debenture (\$20 million) in 2009 and two more sinking fund debentures totaling \$35 million will be repaid by May 2012. Net debt as of March 31, 2010 is \$156 million.

Order:

After reviewing the application, the Board approved the issuance of the Debenture in the principal amount of \$50,000,000 at a rate not to exceed a spread over the benchmark long Canada bonds of 200 basis points.

DECISION 7-2010

June 23, 2010

Application:

By letter dated June 9, 2010, NUL NWT filed an application to adjust the existing Fuel Clause Adjustment Rider (Rider A) for the community of Fort Providence, Dory Point/Kakisa and Wekweti.

Order:

The Board reviewed the schedules and information provided by NUL NWT and approved the rate rider, effective July 1, 2010.

DECISION 8-2010

July 15, 2010

Application:

By letter dated June 10, 2010, the counsel for YK-HR-FP, Mr. Thomas D. Marriott, made an application to the Board for intervener costs with respect to Northland's applications for Review and Variance of Decisions 24-2008 and 25-2008 proceedings. The costs consisted of legal and consultant fees and disbursements in the amount of \$20,539.99.

The Board advised Northland of the application and requested that they provide comments, if any, by June 24, 2010. Northland did not provide any comments.

Order:

The Board reviewed and approved the intervener costs application, as submitted.

DECISION 9-2010

July 30, 2010

Application:

NUL NWT, by letter dated April 21, 2010 applied for Review and Variance of Board Decision 2-2010 (“**R&V Application**”). NUL NWT provided the Board with supporting arguments in its R&V Application. Based on its submissions, NUL NWT stated it was seeking to review Decision 2-2010 where the Board rejected NUL NWT’s request to include the additional O&M of \$134,465 in Rider I and to vary Decision 2-2010 by vacating its approval of the rate order attached as Appendix 1 and approve the Rider I as submitted in NUL NWT’s February 5, 2010 application.

Order:

After reviewing the application and the response to information requests, the Board concluded that it would not vary Decision 2-2010 as requested by NUL NWT to allow recovery of actual O&M beyond the O&M recovery rate proxy.

DECISION 10-2010

August 25, 2010

Application:

By letter dated June 30, 2010, NUL NWT submitted to the Board a 2009 Deferral Account Application (Cost Recovery/Refund Rider – Rider H), as well as a joint application for NUL YK and NUL NWT with respect to the costs recovery relating to the Section 52 High Consumption Review.

The Board stated that it would deal with the 2009 Deferral Account Application (Rider H) in this decision and issue another decision to deal with the Section 52 High Consumption Review.

Order:

After reviewing the schedule and information provided by NUL NWT, the Board approved the revised Rider H, effective September 1, 2010.

DECISION 11-2010

August 25, 2010

Application:

By letter dated June 30, 2010, NUL YK submitted to the Board a 2009 Deferral Account Application (25kV Conversion Project – Rider T and Cost Recovery/Refund Rider – Rider H), as well as a joint application for NUL YK and NUL NWT with respect to the costs recovery relating to the Section 52 High Consumption Review.

The Board stated that it would deal with the 2009 Deferral Account Application (Rider T and H) in this decision and issue another decision to deal with the Section 52 High Consumption Review.

Order:

After reviewing the schedule and information provided by NUL YK, the Board approved the revised Rider T and H, effective September 1, 2010.

DECISION 12-2010

August 25, 2010

Application:

As part of the negotiated settlement for NTPC 1995/98 Phase 1 General Rate Application, NTPC and interveners agreed to establish a deferral account to collect the difference between the full revenue requirement for the Snare Cascades project and the annual variable savings related to the project for five years. The balance in the deferral account would be amortized and collected by way of a rate rider over 10 years beginning April 1, 2001. The Board approved the Phase 1 negotiated settlement in Decision 1-97, dated January 14, 1997.

In a letter, dated August 13, 2010, NTPC advised the Board that the balance in the Snare Cascades deferral account was fully collected. NTPC applied to the Board to terminate the Snare Cascades Rider effective September 1, 2010. NTPC stated that it would provide a reconciliation of the Snare Cascades deferral account following termination of the rider.

Order:

The Board reviewed the letter provided by NTPC and approved the termination of the rate rider, effective September 1, 2010.

DECISION 13-2010

September 10, 2010

Application:

By letter dated April 13, 2010, the Utilities with support from the Department of ENR, submitted a proposal for a Net Billing Pilot Project. The Utilities indicated the purpose of this project was to test the feasibility and logistics of having system connected customers, with acceptable renewable energy generation to meet some or all of their own electrical needs through self generation and sell any excess energy into the grid. Also included with the proposal was a letter, dated April 9, 2010, from ENR to provide written confirmation of their support of the Project and indicate ENR's intention to participate as a partner in this initiative.

Order:

The Board approved the request by the Utilities to undertake a Net Billing Pilot Project pursuant to the Application filed on April 13, 2010 and the directions and comments from the Board contained within this Decision.

DECISION 14-2010

September 14, 2010

Application:

By letter dated September 8, 2010, NUL YK stated that since the Board approved Decision 12-2010, dated August 25, 2010, the termination of NTPC's Snare Cascades Rider, which is a flow through charge which NUL YK charges to its customers, NUL YK requested to terminate its Snare Cascades Hydro Rider (Rider B). NUL YK proposed to reconcile any outstanding balances for Rider B at the time of its next general rate application.

Order:

The Board reviewed the letter provided by NUL YK and approved the termination of Rider B, effective October 1, 2010.

DECISION 15-2010

September 17, 2010

Application:

By letter dated September 13, 2010, NUL NWT filed an application to decrease the existing Fuel Clause Adjustment Rider (Rider A) for the community of Fort Providence, Dory Point/Kakisa.

Order:

The Board reviewed the schedules and information provided by NUL NWT and approved the rate rider, effective October 1, 2010.

DECISION 16-2010

November 12, 2010

Application:

On July 9, 2010, the Board received a letter from the Minister Responsible for the Public Utilities Board, Robert R. McLeod, indicating the Executive Council had approved Electricity Rate Policy Guidelines for consideration by the Board.

In a letter dated July 26, 2010 to NTPC, the Board stated that it accepted the Guidelines as directives from the Executive Council under Section 14(1) of the Act and will implement these directives in accordance with s. 14(2). The Board also stated that it was using the authority it holds under Sections 20 to 22 of the

Act to initiate a hearing and directed NTPC to file with the Board an application to implement the directives from the GNWT.

The resulting NTPC application and proceeding was already discussed in the highlights section of this report.

Order:

After reviewing the information provided by all parties, the Board directed NTPC to re-file its Application to implement the Guidelines, as approved and/or directed in this Decision, by November 22, 2010. NTPC was to provide the Board and other parties with an updated set of rate schedules at the time of the refiling Application.

DECISION 17-2010

November 29, 2010

Application:

By letter, dated November 19, 2010, NTPC requested an extension to November 26, 2010 to respond to the Board's directives that were issued in Board Decision 16-2010. The Board approved the extension for NTPC's refiling of the Application to 12:00 pm on November 25, 2010.

By letter dated November 25, 2010, NTPC re-filed its Application.

Order:

After reviewing the schedules and information provided by NTPC, the Board approved the rate schedules, as interim rates, effective December 1, 2010. The existing rate stabilization fund riders and shortfall riders were terminated effective December 1, 2010.

DECISION 18-2010

December 10, 2010

Application:

By letter dated July 27, 2010, the counsel of Thermal Generation Communities ("TGC"), Mr. G. Ranji Jeerakathil, made an application to the Board for intervener costs with respect to Net Billing Pilot Project proceedings. The costs consisted of legal and consultant fees and disbursements in the amount of \$7,008.00.

Order:

After reviewing the application and letters from the Utilities and TGC, the Board approved the application, as submitted.

DECISION 19-2010

December 10, 2010

Application:

By letter dated December 6, 2010, NUL NWT filed an application to increase the Fuel Clause Adjustment Rider (Rider A) for the community of Fort Providence.

Order:

The Board reviewed the schedules and information provided by NUL NWT and approved the rate rider, effective January 1, 2011.

DECISION 20-2010

December 10, 2010

Application:

By letter dated December 6, 2010, NUL YK filed an application to decrease the NTPC GRA Shortfall Rider (Rider F) applicable to the City of Yellowknife customers.

Order:

The Board reviewed the schedules and information provided by NUL YK and approved the rate rider, effective January 1, 2011.

DECISION 21-2010

December 21, 2010

Application:

By letter dated December 7, 2010, NUL YK applied to the Board for approval to issue a long term debt instrument in the amount of \$1,700,000, by way of an unsecured debenture with an interest rate of 4.99% to ATCO Electric Ltd.

Order:

After reviewing the application, the Board approved the issuance of the Debenture, in the principal amount of \$1,700,000 at an interest rate of 4.99% to ATCO Electric Ltd.

DECISION 22-2010

December 21, 2010

Application:

By letter dated December 7, 2010, NUL NWT applied to the Board for approval to issue a long term debt instrument in the amount of \$700,000, by way of an unsecured debenture with an interest rate of 4.99% to ATCO Electric Ltd.

Order:

After reviewing the application, the Board approved the issuance of the Debenture, in the principal amount of \$700,000 at an interest rate of 4.99% to ATCO Electric Ltd.