

13th Assembly

Legislative Assembly of the Northwest Territories

Standing Committee on Government Operations

The Power Corporation Act

Report on Bill 1: *The Power Corporation Act* and
Bill 2: *An Act to Amend the Public Utilities Act*

An Act to Amend the Public Utilities Act

Roy Erasmus, M.L.A.
Chair

May 1998

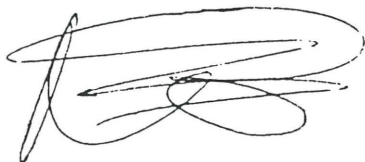
Standing Committee on Government Operations

May 22, 1998

**THE HONOURABLE SAM GARGAN, M.L.A.
SPEAKER OF THE LEGISLATIVE ASSEMBLY**

Mr. Speaker,

Your Standing Committee on Government Operations has the honour of presenting its Report on the Review of Bill 1: the *Power Corporation Act* and Bill 2: *An Act to Amend the Public Utilities Act*, and commends it to the House.



Roy Erasmus, M.L.A.
Chair



MEMBERS OF THE
STANDING COMMITTEE ON GOVERNMENT OPERATIONS

Roy Erasmus
M.L.A. Yellowknife North
Chair

Kevin O'Brien
M.L.A. Kivallivik
Deputy Chair

David Krutko
M.L.A. Mackenzie Delta

Edward Picco
M.L.A. Iqaluit

Seamus Henry
M.L.A. Yellowknife South

Tommy Enuaraq
M.L.A. Baffin Central

Michael Miltenberger
M.L.A. Thebacha

Alternate Members

Levi Barnabas
M.L.A. High Arctic

Jake Ootes
M.L.A. Yellowknife Centre

Floyd Roland
M.L.A. Inuvik

Table of Contents

| | | |
|------------|---|---------|
| 1. | Introduction | Page 1 |
| | • Report Structure | Page 1 |
| | • Bills 1 and 2 | Page 1 |
| 2. | Review Process | Page 2 |
| 3. | Environmental Scan | Page 3 |
| 4. | Principles of the Review by the Standing Committee | Page 4 |
| 5. | Differences – Bills 1 and 2 and Present Legislation | Page 5 |
| 6. | Core Issues the Committee Heard | Page 7 |
| | • Bill 1: The Power Corporation Act | Page 7 |
| | • Corporate Governance | Page 7 |
| | • Review Period | Page 8 |
| | • Tax Implications | Page 9 |
| | • Lack of Comparative Models | Page 9 |
| | • Unanimous Shareholders Agreement | Page 9 |
| | • Proposed 60/40 Split | Page 9 |
| | • Composition of the Board of Directors | Page 11 |
| | • Termination Clause | Page 12 |
| | • Arbitration/Mediation Process | Page 12 |
| 7. | Conclusion | Page 13 |
| Appendix 1 | List of Presenters/Copies of Presentations. | |
| Appendix 2 | History/Mandate of NWT Power Corporation | |
| Appendix 3 | History/Mandate of the Public Utilities Board | |

1. Introduction

Report Structure

1.1 The Standing Committee on Government Operations is pleased to present its Report on the Review of Bill 1: the *Power Corporation Act* and Bill 2: *An Act to Amend the Public Utilities Act*.

1.2 Chapter 1 of the Report establishes the Terms of Reference for the Review and outlines what the Bills are intended to accomplish.

1.3 The 2nd chapter of the Report describes the Standing Committee's course of action in reviewing the two Bills.

1.4 Chapter 3 deals with the environmental scan. It outlines the political forces and legal structures impacting upon the proposed legislation. This Chapter identifies a number of organizations with a significant role in the proceedings and briefly describes their mandates.

1.5 In Chapter 4 of the Report, the principles of the review and the factors that guided the Standing Committee in their deliberations are introduced.

1.6 Chapter 5 of the Report is designed to help the reader understand the differences between the present legislation and how Bills 1 and 2 would impact on the operations of the Power Corporation and the Public Utilities Board.

1.7 Chapter 6 of the Report outlines the core issues that the Standing Committee heard during its public hearings on the two Bills and the solutions offered by the presenters to their concerns with the Bills and the companion documents.

1.8 In Chapter 7 the Committee makes recommendations and explains the current status of the two Bills.

Bills 1 and 2

1.9 On October 23, 1997 the Minister Responsible for the Northwest Territories Power Corporation, the Honourable Charles Dent, introduced Bill 1: the *Power Corporation Act*. Bill 1 received 1st and 2nd Readings in the Legislative Assembly and was referred to the Standing Committee on Government Operations for review and public hearings.

1.10 On October 23, 1997 the Minister Responsible for the Northwest Territories Public Utilities Board, the Honourable John Todd, introduced Bill 2: *An Act to Amend the Public Utilities Act*. Bill 2 received 1st and 2nd Reading in the Legislative Assembly and was referred to the Standing Committee on Government Operations for review and public hearings.

1.11 The *Power Corporation Act* would repeal the current *Northwest Territories Power Corporation Act* and provide for the continuation of the Northwest Territories Power Corporation under the *Canada Business Corporations Act*. The Bill authorizes the Minister to hold shares in the Corporation and to transfer shares to the Interim Commissioner of Nunavut, upon the agreement of the Interim Commissioner. The Government of the Northwest Territories would be authorized to make guarantees on behalf of the Corporation, to make loans and contributions to the Corporation and to invest in the Corporation. Consequential amendments would be made to five other Acts to reflect the change of status of the Corporation.

1.12 The NWT Power Corporation is currently incorporated under territorial legislation and operates only in the Northwest Territories. The new territory of Nunavut will be created under the *Nunavut Act* on April 1, 1999. The effect of the *Nunavut Act* is that the laws in force in the Northwest Territories on April 1, 1999 will be duplicated for Nunavut. If no legislation is passed

before the creation of Nunavut, the current NWT legislation, the *NWT Power Corporation Act*, will be duplicated in Nunavut. This would mean the creation of a separate power corporation for Nunavut.

1.13 In *Footprints 2*, the Nunavut Implementation Commission's report to the Governments of Canada and the Northwest Territories and Nunavut Tunngavik Incorporated on the establishment of Nunavut, the NIC recommended that a single power corporation exist to serve customers in Nunavut and the new Western Territory. The Government of the Northwest Territories agreed with this proposal and introduced Bills 1 and 2 as enabling legislation

1.14 The proposed *Power Corporation Act* calls for the NWT Power Corporation to be continued under federal legislation (the *Canada Business Corporations Act*) with its shares held by the Governments of Nunavut and the Western Territory. Under the *CBCA* the continued corporation could operate in more than one province or territory.

1.15 Bill 2 would amend the current *Public Utilities Act* to allow the Public Utilities Board to establish joint divisions with a public utilities board of another province or territory, where a public utility conducts business in both jurisdictions. The Bill provides that a joint division has the jurisdiction, powers and duties of the Board and that a decision or act of a joint division is a decision or act of the Board. This amendment would allow the future governments of Nunavut and the Western Territory to set up a joint division of their respective Public Utilities Boards made up of Members of both Boards to regulate a utility that operates in both jurisdictions.

1.16 Because the proposed *Act to Amend the Public Utilities Act* is largely a response to the proposed Power Corporation structure set out in the *Power Corporation Act*, the Standing Committee on Government Operations decided to

review and report on the two Bills together.

2. Review Process

2.1 The Standing Committee on Government Operations met on November 18th, 1997 to review the Bills as presented in the Legislative Assembly and to decide on an appropriate course of action to ensure that the interests of all Northerners were represented. The Committee also requested from the Minister, copies of the companion documents relevant to the *Power Corporation Act*, the proposed Unanimous Shareholder Agreement, and the proposed Bylaws and Articles of Continuance of the Corporation and the proposed Allocation of Existing Equity.

2.2 Bills 1 and 2 are primarily enabling legislation. Committee Members realized that the companion documents provide the detail on the proposal for the future of the NWT Power Corporation. Members were aware that these documents would be of interest to the public, and the Committee made arrangements to supply these documents to interested stakeholders and prospective presenters.

2.3 Committee Members realized that passage of Bill 1, the *Power Corporation Act* would result in a fundamental change in the structure of the Power Corporation and in the legal framework within which it conducts its business. To help Committee Members and staff understand the implications of these fundamental changes, the Committee engaged the services of legal counsel with significant corporate and regulatory expertise to assist the Committee in its deliberations.

2.4 In order to ensure that all interested parties had an opportunity to provide input, the Committee solicited responses through advertisements placed in all major northern newspapers. The Committee also provided stakeholder packages and an offer to appear to many identified interested parties. The Committee had initially planned to hold the public hearings during the week of December 15th, 1997, but

revised its schedule at the request of prospective presenters. Public hearings were held in Yellowknife during the week of January 15th, 1998 and on March 30th through April 1st, 1998 in Iqaluit.

2.5 The Standing Committee on Government Operations would like to thank all of the parties who took time to make a presentation to the Committee at the public hearings. The comments and suggestions heard by the Committee were wide-ranging and received careful consideration from Committee Members. Appendix 1 contains a list of presenters who appeared before the Committee as well as copies of their presentations

3. Environmental Scan

3.1 The Standing Committee examined the legal and political framework impacting the proposal for a continued Power Corporation.

3.2 **Nunavut** becomes reality on April 1, 1999. The creation of the new territory necessitates change and Bills 1 and 2 are a result of the Government of the Northwest Territories' measures to prepare for the two new territories.

3.3 **The NWT Power Corporation** is charged with providing safe, economical power to the residents of the NWT. A complete history and mandate for the Power Corporation is included as Appendix 2.

3.4 **The NWT Public Utilities Board** is responsible for regulating energy suppliers in the Northwest Territories. A complete history and mandate for the NWT Public Utilities Board is included as Appendix 3.

3.5 **The Western Coalition** is comprised of representatives from Northwest Territories aboriginal organizations, MLAs, the Western NWT Chamber of Commerce and the Western NWT Association of Municipalities. The Western Coalition represents the western perspective on division matters, such as the division of assets and

liabilities, federal financing issues, the future of the NWT Power Corporation and the Workers' Compensation Board and other issues that will impact the new Western Territory after Division.

3.6 **Nunavut Tunngavik Incorporated (NTI)** is a federally incorporated organization recognized in the Nunavut Final Agreement as the central body responsible for the administration and enforcement of Inuit beneficiary rights as set out in the Final Agreement. NTI's mandate is "to constitute an open and accountable forum, organized to represent Inuit of all regions and communities of Nunavut in a fair and democratic way, that will safeguard, administer and advance the rights and benefits that belong to the Inuit of Nunavut as an aboriginal people, so as to promote their economic, social and cultural well being through succeeding generations." Its role is to ensure that the rights of the Inuit under the Nunavut Final Agreement are not abrogated

3.7 The **Interim Commissioner's Office (ICO)** is charged with setting up the physical government of Nunavut. The Interim Commissioner is appointed under section 72 of the *Nunavut Act* to hold office until the appointment of the first Commissioner of Nunavut. The Interim Commissioner's Office also recruits the employees for the Government of Nunavut, establishes systems and processes for the Government of Nunavut including the organization and administration of territorial courts, and carries out other functions that may be assigned by federal Order-in-Council.

3.8 With the approval of the Governor-In-Council, the Interim Commissioner may enter into agreements to provide services to the people of Nunavut that were previously carried out by the Government of the Northwest Territories, enter into funding agreements with the Government of Canada or the Government of the Northwest Territories in relation to Nunavut and enter into agreements with the Government of the Northwest Territories concerning the division of assets and liabilities between Nunavut and the Northwest Territories.

3.9 **The Canada Business Corporations Act (CBCA)** provides for the incorporation of federal corporations. A CBCA corporation has the basic right to carry on business anywhere in Canada. The CBCA provides a framework for incorporation but allows the incorporators wide latitude to determine how the corporation's affairs will be governed.

3.10 **Articles of Continuance** set out certain important matters about the Corporation. The Articles must contain the following information; the name of the corporation, the place within Canada where the registered office is to be located, the classes of shares including the rights and restrictions attached to each class of shares and any maximum number of shares the corporation is authorized to issue, any restrictions on share transfer, the minimum or maximum number of directors and any restrictions on the businesses the corporation is entitled to carry on and the powers it is entitled to exercise.

3.11 Under the CBCA, Articles can only be amended with the approval of shareholders holding two-thirds of the votes. In other words, a shareholder holding more than one-third of the votes can prevent the Articles from being amended. The number of votes required to amend the Articles can be increased by the Unanimous Shareholder Agreement.

3.12 **Unanimous Shareholder Agreements (USA's)** are specifically permitted under the CBCA. As the name suggests, a Unanimous Shareholder Agreement, is an agreement initially signed by all shareholders. A USA may restrict some or all of the powers of the directors to manage the corporation. Usually, this is done by reserving those powers for the shareholders. A USA can also specify the voting majority of the shareholders required to exercise any particular power.

3.13 One of the advantages of a USA can be the guaranteed participation of minority shareholders in key decisions of the corporation. A disadvantage may be the potential risk of deadlock in the event of a shareholders' dispute which

cannot be effectively resolved.

3.14 **By-laws** are the general rules that govern the internal affairs of a corporation, subject to the CBCA. They generally cover such items as the time for and the manner of electing and removing directors, the qualifications, duties and remuneration of directors, the time and place and notice to be given for shareholders' meetings and directors' meetings. By-laws also deal with the quorums required at those meetings, the procedural matters relating to holding those meetings, the indemnity of directors and officers, the appointment, duties and remuneration of officers and employees of the corporation. The By-laws cover the issue of shares and share certificates, the transfer and registration of transfers of shares, the declaration and payment of dividends and the power and authority of the directors to borrow money and give security. By-laws are adopted by the directors and approved by the shareholders.

4. Principles of the Review by the Standing Committee

4.1 Committee Members were very concerned that as these two Bills were the first Division related legislation to come before a Committee, the review process must be open, fair, and balanced from an east/west perspective.

4.2 Committee Members also realized that the comments and submissions that the Committee would be receiving would reflect the interests and priorities of the stakeholders within the framework of Division depending on which new territory they represented. The Committee's responsibility is to look at the issues from a territorial perspective, and to act in the best interests of all residents of the NWT.

4.3 In conducting its review of the proposed *Power Corporation Act*, the Committee provided a very clear definition to stakeholders and prospective presenters of the Committee's role in

the public review of the two Bills. Committee Members felt that negotiations between the Interim Commissioner's Office and the Government of the Northwest Territories on the Unanimous Shareholder Agreement should be conducted at a properly constituted negotiation table and not in a public forum convened by a legislative Committee.

4.4 Until April 1st, 1999, this Committee has the responsibility to consider the needs of all residents of the present Northwest Territories. This was a paramount principle in guiding the Committee's deliberations.

4.5 Committee Members realized that although their primary responsibility is to review the Bills referred to the Committee, the companion documents could not be ignored. The proposed *Power Corporation Act* is inextricably linked with the USA, Articles and By-laws and must be viewed in that context. The presentations to the Committee reflected this and much attention was focussed on how contentious issues might be resolved through changes to the companion documents. It was not possible to separate the Bills from the broader context.

5. Differences – Bills 1 & 2 and the Present Legislation

5.1 The proposed *Power Corporation Act* would repeal the existing *Northwest Territories Power Corporation Act*, and provide for an application to be made to have the Power Corporation continued under the *Canada Business Corporations Act*. The Minister would be authorized to transfer shares in the Power Corporation to the Interim Commissioner of Nunavut, upon reaching an agreement with the Interim Commissioner.

5.2 As a *Canada Business Corporations Act* corporation, the continued Power Corporation would have powers and restrictions that are different from those under the current NWT legislation. There would be additional flexibility

to place corporate governance provisions in the USA, the Articles and the By-laws of the Corporation.

5.3 The Committee examined the impact Bill 1 and its companion documents would have on the structure and governance of the Power Corporation.

5.4 Under the existing *Northwest Territories Power Corporation Act* ("NWTPC Act"), the Power Corporation is an agent of the Government of the Northwest Territories. A typical *CBCA* corporation is not generally an agent of its shareholders, and the new *Power Corporation Act* would not expressly make the Power Corporation an agent of its shareholders.

5.5 The objects of the NWT Power Corporation are spelled out in the present *NWTPC Act* as supplying energy on a safe, economic and reliable basis and ensuring a continuous supply of energy adequate to the needs and future development of the NWT. A *CBCA* corporation has the power to do anything a natural person can do, if desired; the Articles can place restrictions on the corporation's businesses and powers.

5.6 The proposed Articles restrict the activities of the new Power Corporation to the generation, distribution, supply and sale of electric power; the distribution and sale of residual heat; the establishment and operation of utilities of any kind; the generation, distribution, supply and sale of fuels and energy related products of any kind, and such other incidental activities of any kind that the Board of Directors deems appropriate.

5.7 The present *NWTPC Act* provides for the directors, Chairperson and President to be appointed by the Minister Responsible for the NWT Power Corporation. Under the *CBCA*, the directors are elected by majority vote of the shareholders; the directors appoint the Chair and the President. The By-laws or USA can alter this. The proposed USA calls for the appointment of six directors by the NWT and four directors by the

future government of Nunavut. The Chairperson is to be appointed by agreement of the shareholders and the President is to be appointed by the Board of Directors.

5.8 Presently, under the *NWTPC Act*, the directors of the NWT Power Corporation must act in accordance with directions and policy guidelines from the Executive Council. Under the *CBCA*, the directors are obligated to act in the best interest of the corporation. There are no restrictions or definitions of the directors' duties in the *Power Corporation Act* or any of the companion documents, other than what is contained in the *CBCA* itself

5.9 The directors, officers and employees are not presently subject to liability where they reasonably believe their actions were required or authorized by the *NWTPC Act* or any other Act. The NWT Power Corporation may, with the permission of the Minister, indemnify any person sued by reason of their position within the Corporation. The *CBCA* does not expressly limit the liability of directors, officers or employees; the *CBCA* specifically imposes liability on directors for such things as unpaid employee wages (up to six months) and improper corporate distributions. A *CBCA* corporation may indemnify directors and officers, in certain circumstances, where they are sued in their capacity as such. The proposed By-laws impose an obligation on the new Power Corporation to indemnify the directors or officers when they are sued in their capacity as such. The specific liabilities imposed by the *CBCA* remain in effect

5.10 The directors currently manage the business of the NWT Power Corporation subject to the directions and policy guidelines of the Executive Council. Under the *CBCA*, the directors manage the business of the corporation unless the *USA* restricts management powers. In the proposed *USA* the directors' management powers are restricted only in that they can not cause the Power Corporation to issue additional voting shares, they can not make any material change in the nature of the business of the Corporation or fill

a vacancy among the directors

5.11 The NWT Power Corporation is restricted in its ability to borrow and in the amount of money it can borrow under the *NWTPC Act*. The *CBCA* allows the directors to borrow money, sell and pledge debt obligations and to create interests securing any obligation of the corporation, without the authorization of the shareholders. The proposed By-laws of the new Power Corporation confirm that the board of directors has the broad-based borrowing powers as outlined in the *CBCA*.

5.12 At this time, the NWT Power Corporation may declare dividends subject to the direction of the Executive Council. The *NWTPC Act* requires that these dividends be used to subsidize rates for energy, water or sewerage services. Under the *CBCA* the directors may declare dividends if and when they consider it appropriate, provided the corporation is not insolvent. The Corporation could not place restrictions on how the shareholders use the declared dividends. The provisions for declaring and issuing dividends for the new Power Corporation are as found in the *CBCA* and reaffirmed in the proposed *USA*.

5.13 The NWT Power Corporation, as it is structured now, is restricted in the type of investments it is permitted to make. Unless a *CBCA* corporation is restricted by clauses in the Articles or *USA* there are no restrictions on the types of investments the corporation is permitted to make. The *Power Corporation Act* has no specific restrictions on the types of investments the new Power Corporation would be permitted to make; however, the continued Power Corporation's activities must fall within the parameters of its defined businesses.

5.14 The transfer of ownership of the NWT Power Corporation is not contemplated in the *NWTPC Act*. The *CBCA* places no restrictions on the transfer of shares by a shareholder unless, there are restrictions contained in the Articles or *USA*. The proposed *USA* would require consent of the other shareholder prior to the transfer of shares and under the proposed Articles, the directors'

approval must also be obtained.

5.15 The Auditor General of Canada is the present auditor of the Power Corporation under the *NWTPC Act*. Under the *CBCA*, shareholders generally appoint the auditor by majority vote, and this is contemplated for the continued corporation.

5.16 The NWT Power Corporation is presently subject to the *Financial Administration Act*, although some of the provisions are overridden. The continued Power Corporation would not be subject to any provisions of the *Financial Administration Act*. Similar restrictions could, however, be placed in the companion documents.

5.17 The directors and officers of the present NWT Power Corporation are subject to the *Conflict of Interest Act*. The conflict provisions contained in the *CBCA* are limited when compared to the territorial legislation. The continued Power Corporation would operate under the conflict of interest guidelines contained in the *CBCA*, unless conflict of interest provisions were incorporated into the companion documents.

6. Core Issues the Committee Heard

6.1 Many common issues and concerns related to the Bills and their companion documents were expressed by persons appearing before the Standing Committee on Government Operations, in a context appropriate to the respective interests of the two future territories.

Bill 1: The Power Corporation Act

Corporate Governance

6.2 The proposed *Power Corporation Act* calls for the incorporation of the NWT Power Corporation under federal legislation, specifically the *Canada Business Corporations Act*. This

would effectively remove the NWT Power Corporation from direct political control by the Minister Responsible for the NWT Power Corporation. While presenters could see some merit to the proposal to incorporate the NWT Power Corporation as a *CBCA* corporation, there was concern that the checks and balances contained in the USA were not sufficient to protect the interests of the peoples of the NWT and Nunavut.

6.3 The **Western Coalition** was concerned about the lack of legislative control over the operations of the Power Corporation under the proposed *Power Corporation Act* and companion documents. The Coalition felt it was important to insert into the USA corporate governance provisions to protect the public interest. These provisions would include, but are not limited to, the creation and operating of an Audit Committee, a Human Resources Committee and a Corporate Governance Committee made up of Members of the Board of Directors. The Coalition also proposes that certain provisions of the *Financial Administration Act* and the *Financial Administration Manual* and other legislation be imported to the USA to provide for greater protection of the public interest.

6.4 The **Town of Fort Smith and Stand Alone Energy Systems** are both concerned that the two governments would lose flexibility and control in favour of a financial advantage to the Power Corporation. These presenters argue that the rationalization for the proposed model for the Power Corporation requires more in-depth analysis.

6.5 **Nunavut Tunngavik Incorporated** notes that the incorporation of the Power Corporation may appear attractive because it suggests an efficient and business-like relationship between the Power Corporation and the governments which will be its shareholders. However, the structure would mean that the governments would lose some of the existing controls over the workings of the Power Corporation, without gaining much in return. Without independent financial analysis,

NTI believes that this is the wrong time to pursue this option.

6.6 NTI has proposed an 18-month interim agreement. This interim agreement would approximate the current status quo of the Power Corporation as closely as possible. It would identify one trustee to hold the undivided shares in the Corporation in escrow, with terms that prevent any major business changes in the short term.

6.7 NTI also suggests that an independent consultant analyze the technical and financial implications of the proposal. NTI's major concern is that the new structure would impact on the subsidy programs and would result in a price increase for the residents of Nunavut. The independent consultant would examine the direct subsidy, presently provided for by Power Corporation dividends, and the effects of the proposal on other programs that will be directly or indirectly subsidized by the future Government of Nunavut.

6.8 NTI believes that the negotiation of any deal on the Power Corporation must be on a government to government basis and that a moratorium on the deal would allow the future government of Nunavut time to "get on its feet." NTI envisions that minor changes to existing legislation would accomplish their proposal.

6.9 The **Interim Commissioner's Office** believes that continuance of the Power Corporation under the *Canada Business Corporations Act* is a fundamental change in the way the Power Corporation conducts its business. The ICO believes that the GNWT proposal is inconsistent with the recommendations contained in the Nunavut Implementation Commission's reports, *Footprints 1* and *Footprints 2*.

6.10 The Interim Commissioner's Office is of the opinion that NIC's recommendation for joint political control implied equal control of the Power Corporation by the two parties. The ICO had understood that the Power Corporation would remain under direct political control of the two governments.

6.11 The ICO agreed with the position of NTI, that an 18-month interim agreement maintaining the status quo of the Power Corporation should be entered into until such time as the two governments are able to negotiate an agreement on equal footing. The ICO envisions negotiating the inter-jurisdictional agreement in conjunction with a termination agreement. Should the two parties be unable to come to an agreement on the future of the Power Corporation, the termination agreement would come into force and two power corporations would come into existence.

6.12 Providing that agreement can be reached on the underlying model and the continuation of the Power Corporation under the *CBCA*, the Standing Committee on Government Operations believes that the corporate governance issues can be dealt with to the satisfaction of all parties by inserting appropriate clauses in the Unanimous Shareholder Agreement, the By-laws and the Articles of Continuance.

Review Period

6.13 Several presenters suggested that a requirement for a review period should be attached to any agreement between the parties. The majority of presenters preferred incorporating provisions for a review period in the Unanimous Shareholder Agreement. However, the Committee Members felt that for greater certainty, the review period clause should be included in the Bill rather than the companion documents.

6.14 In his presentation on behalf of his constituents, Mr. Miltenberger suggested that a clause establishing an initial three-year review period be incorporated in Bill 1, the *Power Corporation Act*. A review period would require the future governments to consider whether the structure of the Power Corporation continues to meet the needs of the residents of each territory. The governments would also have the opportunity to opt out of the agreement. In Mr. Miltenberger's view, this would provide stability to the Power Corporation for the short term, while ensuring that each government has the flexibility to ensure that

the arrangement continues to be the most effective structure for the delivery of power in each jurisdiction.

Tax Implications of Continuance

6.15 Presently, the earnings of the Corporation are not subject to corporate taxation, because the Government of the Northwest Territories is the sole shareholder of the NWT Power Corporation. Several presenters were concerned that with continuance of the Power Corporation as a CBCA corporation that this tax-exempt status would cease. Although the Minister Responsible for the NWT Power Corporation and Power Corporation officials responded that they had been verbally informed by Revenue Canada that the tax-exempt status would continue, this was an area of concern.

6.16 After the completion of the public hearings, the Minister supplied to the Committee a copy of an interim tax ruling by Revenue Canada. The ruling confirms that the Power Corporation would likely continue its tax-exempt status for so long as the Governments of the NWT and Nunavut remain the sole shareholders.

Lack of Comparative Models

6.17 Several presenters to the Standing Committee were concerned that the model for the future Power Corporation, as presented in Bill 1, the *Power Corporation Act* and its companion documents, might not be the best option. The Committee shares that concern and had expressed this to the Minister during the early stages of the Committee's review of the Bill.

6.18 While generally satisfied with the Minister's explanation that continuation of the Power Corporation as a CBCA corporation was the most viable option, in the Committee's view, other options should have been presented to the stakeholders early in the process and the Government's reasoning on the options fully explained.

Unanimous Shareholder Agreement

6.19 As mentioned earlier in this report Standing Committee on Government Operations recognizes that it is not technically within the Committee's purview to provide recommendations on the proposed Unanimous Shareholder Agreement. The Standing Committee has always held the view, however, that the successful passage of the *Power Corporation Act* is contingent upon the negotiation of a mutually acceptable Unanimous Shareholder Agreement between the governments of the NWT and Nunavut.

6.20 The following comments by the presenters to the Standing Committee are included in this report to provide understanding on the areas of agreement and division on the proposed USA. The Committee is pleased that these negotiations are ongoing.

Proposed 60/40 Share Split

6.21 One of the major issues of concern to the parties making presentations to the Standing Committee is the proposed share split for the new Power Corporation contained in the USA. According to the NWT Power Corporation, the proposed 60/40-share split between the NWT and Nunavut, as contained in the USA, was determined using generally accepted accounting and business practices. The proposed share split also takes into account that all of the issued and outstanding shares of the Northern Canada Power Commission were purchased by the GNWT from the federal government for \$1 in 1988 on behalf of all the people of the NWT.

6.22 For the purposes of the share split the value of the equity at the time of the purchase of the NCPC by the GNWT has been determined to be \$43,129,000. At the time of the sale to the territorial government, NCPC had a debt to the federal government of \$96M. The GNWT bought NCPC for \$53M; essentially the federal

government forgave the other \$43M, which forms the value of the equity. The NWT Power Corporation has repaid the \$53M to the GNWT, with interest, with the final payment due in June 1998.

6.23 The NWT Power Corporation's reasoning for the 50/50 split on the \$43M in equity between Nunavut and the Northwest Territories is that under NCPC ownership, the costs of assets in each community were not specifically recovered through the rates set in that community. This means that although NCPC records indicate in which community the assets were acquired, the cost was being recovered on a territorial-wide basis from all customers. In the opinion of the NWT Power Corporation, this makes it impossible to verify that the customers in a particular community in fact paid for the assets in that community, and the fairest way to allocate the common stock of \$43M is to divide it equally between the customers in the East and the West.

6.24 The second component that the NWT Power Corporation used in determining the 60/40-share split is retained earnings. Retained earnings represent the cumulative earnings of the NWT Power Corporation from June 1988 (the time of acquisition by the GNWT) to March 31, 1998. Retained earnings were generated using the assets of the Corporation, and can be allocated based on the net assets in both Nunavut and the Western NWT.

6.25 The NWT Power Corporation's rate base is the base used to allocate retained earnings to each Territory as of March 31, 1998. The NWT Power Corporation forecasts that 31% of the rate base will be located in the East and 69% in the West. This same rate of allocation would be applied to the retained earning forecast of \$56M as of March 31, 1998.

6.26 Combining the above equity factors, the NWT Power Corporation proposes that 40% (\$39.1M) of the total equity be allocated to the East and that 60% (\$60.0M) be allocated to the West.

6.27 The **Western Coalition** does not agree with the share split as proposed and believes the split to be unfair to the residents of the new Western Territory. The Coalition suggests two alternate approaches to the \$43.0M in equity. First, because the \$43.0M was a gift from the federal government to the residents of the NWT, one can argue that this "gift" should be distributed on a per capita basis. Based on the 1991, census approximately 63% of NWT residents lived in the West and 37% in Nunavut.

6.28 Secondly, the Western Coalition argues that the \$43.0M in equity has been earning a return on equity since 1988. Since the return on the equity has been paid by customers through their rates, and since contributions to this return on equity have been generally made according to the rate base, the Coalition believes that the formula for the share split should be based on the 1997/1998 rate base of 69% for the West and 39% for Nunavut.

6.29 The Western Coalition calculates that if the original \$43.0M in equity is distributed on a per capita basis and the remaining equity is split according to the rate base of each territory, the Western Territory would hold 66% and Nunavut would hold 34% of the shares in the new Power Corporation. The Western Coalition asserts that the formula for the share split must be determined using past performance and cannot be based on future possible mitigating factors, such as the closing of Giant Mine or projected population growth in Nunavut.

6.30 The MLA for Yellowknife Centre, **Mr. Jake Ootes**, also supports a share split that allocates a greater proportion to the Western Territory. The **Town of Hay River** believes that this is an issue that can be worked out within the USA negotiations by the two parties.

6.31 The **Office of the Interim Commissioner** does not agree that the proposed the share split is fair to the residents of Nunavut. The share split is similar to the proposed membership structure of the Board of Directors in that does not guarantee the people of Nunavut an equal say in the affairs of

the proposed continued Power Corporation. The Interim Commissioner's Office feels that there is insufficient data to recommend the adoption or approval of the proposed share split model, or any other model for that matter.

6.32 **Nunavut Tunngavik Incorporated** also has concerns with the proposed 60/40-share split because the model does not take into account that three-quarters of the accumulated debt is for projects in the Western NWT. NTI also notes that the model does not take into account the fact that future growth of the NWT Power Corporation will be steady in Nunavut and will follow measurable population increases. In the Western Territory, NTI suggests that future growth is tied to more directly to industrial growth. Due to the uncertainty of industrial growth projections, NTI maintains that the assumption that the Western Territory will increase at the same rate as in Nunavut cannot be relied on.

6.33 NTI also argues that the future expiration of franchise power distribution agreements in the Western Territory could lead to reduced revenues should any of the franchisees decide to generate their own power. NTI can see the case for an unequal profit split but can see no case for anything less than a 50/50 voting share split.

6.34 The joint presentation by the **Baffin/Iqaluit Chambers of Commerce** call for the share split to be based on revenue and not assets. This would work out to 46% of the shares for Nunavut and 54% for the Western Territory. However, the Chamber is convinced that a 60/40-share split is doomed to failure because minority shareholder rights cannot be adequately protected. The Chambers believe that there must be an element of trust in the sharing of the Power Corporation by the two territories and that a 50/50-share split would show this trust. The Chamber stated that the Power Corporation must be equally owned and operated. Anything less than equal ownership and control means that there should be two power corporations.

6.35 The MLA for the High Arctic, **Mr. Levi Barnabas** stated that the proposed 60/40 share

split would be unfair to the residents of Nunavut and that the distribution should be 50/50.

Composition of the Board of Directors

6.36 The proposed composition of the Board of Directors for the continued Power Corporation is outlined in Section 2(a) of the Unanimous Shareholder Agreement. This section states that unless the shareholders agree in writing, and notwithstanding the provisions of the By-laws of the Corporation, the Board of Directors will consist of twelve members. The Western Territory will be entitled to appoint six directors to the Board and Nunavut will be entitled to appoint four directors to the Board.

6.37 The Chairman and the President would also act as members of the Board of Directors. The Chairman would, under the USA, be appointed by agreement of the Shareholders and the Board would appoint the President. The President may be, but does not have to be, appointed from the existing members of the Board of Directors.

6.38 The proposed composition of the Board of Directors for the new Power Corporation drew sharp criticism from the Nunavut presentations to the Standing Committee.

6.39 The **Interim Commissioner's Office** is concerned that the Nunavut Board members would always be in a minority position on the Board of Directors. This concern is compounded by the fact that a majority of Board Members would constitute a quorum and any decisions could be made by a simple majority of that quorum.

6.40 **Nunavut Tunngavik Incorporated** also raised the points that the proposed Board of Directors was not consistent with the recommendations contained in the NIC's Footprints Reports. In NTI's view, the "shared" arrangement model proposed in Footprints 2 requires equal political control. NTI suggests that it would be irresponsible of NTI to approve a share

structure that results in a permanent disadvantage in voting shares. In NTI's opinion, a 50/50-share split between the two Governments would represent "institutionalized trust."

6.41 The joint submission from the **Iqaluit/Baffin Chambers of Commerce** also proposes equal representation by the two territories at the Board of Directors level. The Chamber is of the opinion that anything less than 50% in shares or control would mean two Power Corporations are necessary.

Termination Clause

6.42 Several presenters expressed concern that there was no termination clause included in the proposed *Power Corporation Act* or in the USA. The *Canada Business Corporations Act* provides mechanisms by which a corporation may be dissolved, voluntarily or by application to court by a shareholder.

6.43 The **Interim Commissioner's Office** believes that any agreement on the future of the Power Corporation must include a mutually acceptable pre-determined arrangement on how the termination process would be implemented. It is not acceptable to the ICO that a termination agreement could be negotiated at the time of separation into two Power Corporations. This should be accomplished by inserting a termination clause in the USA.

6.44 The **Western Coalition** agrees that it is necessary to include a pre-determined detailed plan clearly describing how the Corporation would be divided in the event that it became impossible to continue with the proposed partnership. The termination clause should include a strict precondition that arbitration or mediation precedes termination and that a physical division of assets will take place according to a predetermined formula. Either shareholder must have the option to opt out of the partnership unilaterally for any reason. This should be accomplished by inserting a clause in the USA.

6.45 In presenting on behalf of his constituents **Mr. Michael Miltenberger**, the MLA for Thebacha, also agrees that it is inappropriate that the proposed agreement be indefinite, and argues that a binding agreement should not be imposed on the two future territorial governments. He suggests that there should be an initial specified review period (perhaps three years) and a defined process for dividing the Corporation. At the end of the review period, either party could decide to terminate the agreement. Mr. Miltenberger envisions the review and dissolution agreement incorporated into Bill 1: *The Power Corporation Act*.

Arbitration/Mediation Process

6.46 There was also significant agreement among the presenters to the Standing Committee that a defined arbitration/mediation process should be incorporated into the Unanimous Shareholder Agreement.

6.47 The proposed USA calls for the two shareholders to use their best efforts to resolve any disputes on the application or interpretation of the USA as quickly as possible. If the two parties cannot resolve the dispute, they agree to refer the matter to a mediator. If the parties cannot resolve the dispute with the assistance of the mediator, they agree to refer the matter to a sole arbitrator for resolution. If the parties cannot agree on the appointment of a sole arbitrator, the matter will be referred to an arbitration panel, made up of one member from the Western Territory, one member from Nunavut, and the third member to be appointed by the two members appointed by the two territories. The decision of the arbitrator shall be binding upon the two parties. The party who is unsuccessful in the arbitration shall bear all costs unless otherwise ordered by the arbitrator.

6.48 The **Interim Commissioner's Office** believes the dispute resolution process to be inadequate. The ICO believes that the terms "application" and "interpretation" need to be clearly defined.

6.49 The **Western Coalition** suggests that a provision be added to describe the rules and procedures on arbitration and to stipulate the law to be applied to the resolution of arbitration. The dispute resolution clause should also include the procedure for either party to give notice of their intention to enter into arbitration, a time frame to select an arbitrator and the identification of the location where the arbitration is to take place.

6.50 **Michael Miltenberger**, MLA for Thebacha, expressed his view that the proposed arbitration process is too complicated. He is not confident that a dispute could be resolved in a reasonable length of time.

7. Conclusion

7.1 The Standing Committee on Government Operations has maintained since the beginning of the review process that passage of Bill 1: the *Power Corporation Act* is contingent upon successful negotiation between the ICO and the GNWT of a mutually acceptable Unanimous Shareholder Agreement.

7.2 The Minister Responsible for the NWT Power Corporation has advised the Committee and the House that negotiations are ongoing and that the parties need time to negotiate an equitable agreement. Since the Fifth Session is expected to prorogue before Bills 1 and 2 can be considered in the context of an agreement having been reached, the responsible Ministers intend to introduce new legislation during the Sixth Session of the Thirteenth Assembly.

7.3 Although it may appear that the two sides are widely divergent in their positions on the future of the Power Corporation, the Committee is hopeful that there are sufficient common positions between the Government of the Northwest Territories and the Interim Commissioner's Office, to facilitate the successful negotiation of a Unanimous Shareholder Agreement.

7.4 Committee Members agreed that it was still important to report on the review and public hearings on the two Bills to date. The Standing Committee will conduct a detailed clause by clause review of the reintroduced Bills and will report to the Legislative Assembly on its review.

7.5 Some technical drafting issues with the *Power Corporation Act* have been raised and will need to be addressed, but they do not impact upon the intent of the Bill. Assuming the successful negotiation of a viable Unanimous Shareholder Agreement, the Committee is confident that these issues can be dealt with at a later date.

7.7 Bill 2: *An Act to Amend the Public Utilities Act* did not elicit strong sentiments from the stakeholders making presentations to the Standing Committee. All parties seem to agree that the proposed amendments would be satisfactory if a mutually acceptable USA can be worked out. The Standing Committee recognizes that the proposed amendments are enabling provisions, and that their usefulness depends upon the continued cooperation of the two Public Utilities Boards. The Standing Committee has no difficulty with the proposed amendments at this time.

List of Presenters – Appendix 1

Public Hearing in Yellowknife, January 15 & 16, 1998

- Western Coalition – Mr. Floyd Roland
Mr. Mike Aumond
- Stand Alone Energy - Mr. Dennis Bevington
- Town of Hay River - Mr. Jack Rowe
- Town of Fort Smith - Mr. Michael Miltenberger for Mr. Peter Martselos
- Union of Northern Workers - Ms. Georgina Rolt-Kaiser
- MLA Yellowknife Centre - Mr. Jake Ootes
- MLA Thebacha - Mr. Michael Miltenberger
- MLA Hay River - Ms. Jane Groenewegen

Public Hearing in Iqaluit, March 31 and April 1, 1998

- Interim Commissioner's Office - Mr. Jack Anawak
Mr. David Kravitz
Ms. Lois Little
Mr. David Stout
- Nunavut Tunngavik Incorporated - Ms. Laura Gauthier
- Iqaluit/Baffin Chambers of Commerce - Mr. Steven Roberts
- MLA High Arctic - Mr. Levi Barnabas

The Standing Committee on Government Operations is pleased to provide copies of the presentations made to the Committee, as supplied by the presenters.

WESTERN COALITION

Presentation to the Standing Committee on Government Operations

Northwest Territories Power Corporation Plan for Division

January 16, 1998

Introduction:

Before I begin with my presentation I would like to take a few minutes and provide you with some background on the Western Coalition and what its role is in the establishment of a new Western Territory.

The Western Coalition is a partnership of western aboriginal, political and business leaders with representatives from the Aboriginal Summit, Western Caucus of the NWT Legislative Assembly, the western members of the NWT Chamber of Commerce and the western municipalities of the NWT Association of Municipalities.

The Coalition provides its members with a forum to represent their respective bodies in the establishment of an economically viable new Western Territory as we proceed with the creation of two new territories on April 1, 1999.

The purpose of the my presentation to committee is not to criticize the fundamental concept of continuing the NWT Power Corporation after April 1, 1999, but only to offer what we feel are improvements to the proposal put forth by the GNWT.

Original Position of the Coalition

The Coalition has been studying the NWT Power Corporation's Plan for Division since the spring of 1997. In August of 1997 I wrote to the Minister responsible for the NWT Power Corporation and stated that the Coalition was prepared to

conditionally support the proposal in principle provided that the distribution of shares is based on either net assets or net earnings held or contributed by each territory. It is clear from the share split proposed in the Unanimous Shareholders' Agreement (USA) that this is not the case. In the share split proposed in the USA, the original equity in the NWT Power Corporation is split on a 50/50 basis, not on retained earnings or the rate base provided by each territory.

Original Capital Stock of the NWT Power Corporation

When the GNWT acquired the NWT Power Corporation (Corporation) in 1988 from the federal government, the federal government forgave some of the Corporation's debt and gifted the GNWT \$43 million in Corporation shares.

The \$43 million in equity can be considered in two ways. First, because this was a gift to the residents of the NWT, one can argue that this gift should be distributed on a per capita basis. Based on the 1991 census approximately 63% of the NWT residents lived in the West and 37% in Nunavut.

Secondly, the \$43 million in equity has been earning a return on equity since 1988. This return has been paid by customers through their rates. Contributions to this return on equity have generally been made according to the rate base. Shares of the rate base for 1997/98 are approximately 69% for the West and 31% for Nunavut.

If the original \$43 million in equity is distributed on a per capita basis and if the remaining equity is distributed based as per the rate base of each territory, the West would hold 66% and Nunavut 34%.

The proposal also seems to rationalize and support the 50/50 split of original equity on the basis of future business prospects, namely Royal Oak Mine closing. While it is true that this mine will close in the future, one can never really predict when such an unfortunate event will occur. The Coalition does not agree with this reasoning for two reasons:

1. Pro forma forecasts are notoriously unreliable; and
2. Future prospects should have no relevance to past gifts.

The Coalition recommends that the fairest distribution of this “gifted” equity is on the basis of rate base.

Two Operating Divisions Under One Corporation

The proposal envisions the corporation carrying on business in two separate and distinct territories. The industry within which the corporation operates is rapidly changing with technical developments introducing improved methods, equipment and even new market opportunities. While both territories are high cost and difficult to serve areas, there are significant regional differences between them.

In the interests of operating the NWT Power Corporation in manner that is both transparent and recognizes the regional differences between the West and Nunavut, the Coalition recommends that the Corporation be divided into two separate operating divisions or profit centres.

Two operating divisions or profit centres would require two classes of shares, one for each territory. Two classes of shares would allow for a different dividend to each shareholder. The dividend formula could be the same for each class of shares but based upon the performance of each operating division. This would allow for a different rate of dividend based upon the annual financial performance of each territory.

The advantages of creating two operating divisions or profit centres are as follows:

1. Economies of scale (in purchasing power, central management and technical support from headquarters staff) are still maintained;
2. Access to capital from the financial market is maintained;
3. Questions or perceptions about which territory is “subsidizing” the other’s capital investments or replacements are non existent because each territory or operating division would finance its own capital requirements; and

4. Should shareholders decide at some point in the future to divide the corporation, there would already be a basis for this division established.

Constituting two operational divisions within the Corporation provides the residents and customers of each territory with all the benefits they now enjoy for the current Corporation but also provides the added benefit of transparency in that cross-subsidization will longer be an issue.

Guiding Principles for Operation the Corporation

In an effort to determine the philosophical underpinnings upon which the Corporation will operate, the Coalition recommends that following guiding principles be added to the USA. In our minds, these guidelines would further clarify and enhance the “Good Faith” clause in Section 8 of the proposed USA as well as provide some protection to public:

1. Each shareholder agrees to exercise its shareholder’s rights and other powers in a manner which preserves the value of the corporation, maintains existing efficiencies and economies of scale, protects the consumer from unnecessary increases in the cost of power and continues to allow for a fair return to respective shareholders; and
2. The power corporation shall at all times, be required to continue to operate in a businesslike manner, delivering reliable cost effective power as a public utility.

It is our belief that a set of basic principles such as these and others would be very helpful in supporting the continued operation of the Corporation and guiding any arbitration that may occur.

Finally, and most importantly, the above set of principles would support the fundamental principle that the corporation be run strictly as a business, not as tool to achieve social and economic policy objectives.

Corporate Governance

Today the NWT Power Corporation operates as a wholly-owned crown corporation governed by the provisions of the NWT Power Corporation Act and all other applicable legislation including the Financial Administration Act. These acts contain numerous provisions restricting the powers of the Corporation and its officers all in the name of protecting the public interest.

The proposal under consideration would see the Corporation operate, for the most part, without any legislative control. Therefore, it is important to insert into the USA, corporate governance provisions to protect the public interest.

Although the proposal does offer some provisions for corporate governance, it is our opinion that they may be a little simplistic considering the circumstances. At a minimum I would suggest that provisions be included to address directors obligations for the creation and operation of an Audit Committee, Human Resources Committee and a Corporate Governance Committee.

The Audit Committee could be charged with the responsibility for managing the financial reporting of the Corporation including receiving the annual report of the external auditors, approval of audited financial statements and receiving and review of internal audit reports. The Human Resources Committee would manage employee compensation and benefits, succession planning, environmental health, safety and general human resource issues. The Corporate Governance Committee would manage such issues as environmental concerns, regulatory compliance and shareholder/inter-governmental affairs.

Without getting into specifics, corporate governance regulations could be imported from other legislation to protect the public interest such as but not limited to:

1. Financial reporting and control (Part IV and Section 79 of the Financial Administration Act (FAM));
2. Duties of Accountability (Section 77 FAM);
3. Guidelines on Dividends and their application (Section 29 FAM); and

4. A prohibition on conflicts of interest within officers and directors as defined by the Conflict of Interest Act (Section 15).

These are just some examples and there are several others which would need to be redefined in the context of the new partnership and replaced by comparable provisions within the USA. It is felt that the public interest in this regard will be parallel, if not identical.

Arbitration Clause:

The Coalition recommends that Section 9. Dispute Resolution should contain a provision that describes the rules and procedures on arbitration as well as stipulating the applicable law to be applied to the resolution of arbitration. In addition, this section should also provide for a procedure for either party giving notice of their intention to enter into arbitration, a time frame to select an arbitrator and the identification of the location where the arbitration is to take place.

Termination Clause:

Whether or not the GNWT proposal to continue operating one power corporation after April 1, 1999 with two shareholders is approved by the Legislative Assembly, there needs to be a pre-determined detailed plan clearly describing how the Corporation would be divided in the event it becomes impossible to continue with the proposed partnership. One could assume, given whatever share split is agreed upon, that proportionate share holding would apply to the distribution of net assets after payment of all liabilities. Short of liquidation, nothing in the proposal provides any certainty with respect to distribution of equity once it is determined that the partnership will not continue. Unless, a pre-determined detailed plan describing how the Corporation will be divided is incorporated into the USA, the process of the split promises to be a long, painful and expensive negotiation.

The above provision could be incorporated as part of a "Termination Clause". A "Termination Clause" is a necessary component to a USA. As with the division of the Corporation's equity, all conditions leading to termination need to be clearly expressed. The process for termination must also clearly describe all applicable terms for the termination.

Most USA's also include a fundamental business breakdown termination provision commonly described as a "shotgun clause" which normally allows any shareholder to bring about termination for any reason.

Where a termination clause is included, the underlying intent is to allow the business of the corporation to continue under a revised capital structure. Such agreements typically include share buy/sell arrangements, terms of financing such buy/sell arrangements, clear time schedules for termination events, clear provisions for handling any other related matters between parties etc.

The proposal before us, however, is not typical because the shareholders are governments and business of the Corporation is providing public utility services to residents. Therefore, the exact terms of termination need to be drafted to be applicable to the circumstances. However, the underlying intention and allowing the business of the Corporation to continue does apply. Therefore, we recommend a termination clause that includes:

1. A strict pre-condition that arbitration or mediation precede the triggering of termination; and
2. A simple "shotgun" clause which provides adequate time lines to allow for the continuation of utility services in each territory, and a physical division of assets on a predetermined formula.

The stated principles for the division of the Corporation need to be included in a formula and inserted into the USA as a clear option available to either shareholder to opt out of the proposed partnership, unilaterally and for any reason.

In the absence of a "shotgun" clause", there is a huge risk of mismanagement of necessary public utilities should a fundamental business breakdown occur between the shareholders because the only other options available are arbitration or court action. In such an event, , the only foreseeable result is dissolution of the Corporation which is unacceptable because of the adverse impact on the public. It is for these reasons that such a "prenuptial agreement" is absolutely necessary. The residents of West and I suggest also Nunavut, deserve this protection.

Summary:

To sum up, I submit to the committee that the proposed split of the original equity of the NWT Power Corporation is inequitable to the residents of the West. Clearly this gift from the federal government was made to the GNWT on behalf of all the residents of the NWT. Since 1988, I have no doubt that Western residents and businesses have contributed well more than 50% of the NWT Power Corporation's rate base. Even if the original equity were to be split on a per capita basis (if one views this as a gift to all the people of the NWT) the West rightfully deserves more than 50%. There is no reasonable explanation why the residents of the West deserve to receive less than their fair share of the original equity of the NWT Power Corporation. The Coalition is not asking for more than its fair share, only its fair share. Justifying only a 50% share because of what might occur in West in the future bears no relationship to a past gift to the all the residents of the NWT east and west.

In order to make clear that there will be no cross-subsidization from one territory to another, we submit that the Corporation should be structured into two separate operating divisions or profit centres. This would also provide the foundation for the division of the Corporation should either territory decide to exit the partnership.

While we are not predicting the partnership will break up in the future, we are strongly recommending that a "Termination Clause" that includes "shotgun" provision be included for the benefit of both territories. The last thing anyone wants is a long drawn out litigation from which no territory can benefit.

Finally, the Coalition suggests to the committee that it recommend to the Minister responsible not to read the proposed legislation in the House until the USA has been agreed to by the parties. What benefit can be derived from passing legislation when the principals have yet to reach an agreement? Surely we do not want to see an agreement imposed on two future governments that they do not agree with.

The Coalition is asking the committee to consider our recommendations when they report on the draft bill to the Legislative Assembly.

Thank You.
Floyd Roland, Chairman

STAND ALONE ENERGY SYSTEMS

REGARDING: Proposed Acts governing the development of a single Electrical Power Corporation for the New Western Territory and Nunavut

A submission to the Standing Committee on Government Operations , Legislative Assembly ,
Yellowknife , N.T.

Introduction

In her review of the NWT power corporation's plan for division, prepared for the western coalition in July 1997, Nadine Nichols identified the central issue in determining the structure of the electrical utility after division into two new territories. The tradeoff is between control and flexibility versus the long term financial stability of the Power Corp.

The option presented in the draft legislation chooses to relinquish some aspects of flexibility and control in favor of a purported financial advantage. If the single utility will be owned and controlled by two separate governments neither government will have same amount of flexibility or control over the electric utility as the current government.

We must ask why ? What will the people of the territories get in return for loss of control? The Power Corp. and the Minister argue that a single organization will be more cost efficient. The same argument could have been made for any other service provided by the current government. However in the debate over division the choice which has been made in every other department , board and agency has been to create parallel structures for each of the new territories. In addition there has been no efficiency audit or review by an independent body which quantifies or substantiates the claim of financial benefit for a single corporation. Experience in other jurisdictions has in fact demonstrated the opposite. Smaller locally controlled electrical utilities are more efficient, more competitive and more cost effective than large monopolistic corporations. For example, the US electrical utility industry is going through major deregulation. Ontario Hydro is involved in a similar process and Alberta has chosen to market electricity through the new Alberta Power Pool.

Locally controlled small utilities are not only potentially more efficient and cheaper but they also provide a powerful tool for local policy implementation. Among the ten cities recognized by the International Council for Local Environmental Initiatives as most successful

in reaching their carbon emission reduction targets, nine of them had direct control of their electric utilities.

In addition to these general concerns we have specific concerns and suggestions regarding the timing and formation of this proposed legislation. The tabling of this act seems out of sequence with any process that would permit a proper analysis by legislators, interest groups and the general public, all of whom living and working in the north have a significant and real stake in the future direction of this part of our economy and lifestyle. The fact that the agenda for the development of the act to date has been driven by the existing company, with a vested interest in maintaining the status quo, has skewed the process from the start. There are a number of very significant steps missing in this process, (some which have been identified in the limited and selective briefings that have been conducted over the past year) that must take place to ensure the public interest is protected.

These would include, but are not limited to; an options document, a management effectiveness audit of the N.W.T.P.C., a strategic plan for energy management of the two territories, and a public involvement process.

1. An options analysis document

There is a need for the definition of a clear set of options for the management of energy in the future territories. This should be accomplished by an independent and competent agency or consultant reporting directly to this assembly. The following are some thoughts on some options which should be considered.

A. One company for two territories - This is the option presented by the company through the minister in charge. One of the side issues in this regard would be the relationship to two Public utility boards.

B. Two separate companies, geographical division of assets - this option can only be examined fairly by assuming a restructuring of existing administrative structures. Experiences in the Yukon may be of some benefit here. Within this context as well, it may be appropriate to look at the opportunities for communities and regions to be empowered with responsibility to manage and deliver these services to their areas.

C. Privatization of one or both independent power companies - This direction would assume that our respective governments after division could determine the desirability and timeframe for the disposition of these valuable assets. Under the model proposed by N.W.T.P.C. ,this action by each territory would be extremely difficult , if not impossible.

Privatization does not necessarily imply the sale of companies totally to a single corporate interest. Communities, aboriginal or public regional corporations could take specific parts of the electrical generation and distribution market. This model already exists in terms of the presence of Northland Utilities in Ft. Providence, Hay River and Yellowknife as well as privately owned power stations at most industrial sites. These businesses are very successful and provide a high degree of service at comparable rates. In a world perspective, the small community based power company are prevalent throughout northern Europe (Sweden, Denmark, Finland). They have proven to be highly effective economic operations ,with great results for the customers. Sweden , for example, has close to 200 independent utility companies; some serve as few as 1000 customers.

D. Two separate power companies with shared management services - A variety of approaches could fit under this option. Services could be provided to the Nunavut corporation from the existing headquarters in the west within a timeframe established by the two governments. This could be phased out over a period of years to provide an orderly and cost effective scenario. Alternately, management services could be contracted out to the private sector , both in the north or elsewhere in Canada.

This option could provide a very secure transition through division, and would allow for the new governments to develop their own long term best interests.

2 An audit of the management effectiveness of N.W.T.P.C.

Many statements have been made by N.W.T.P.C. representatives on the cost to the consumer of any reordering of the existing structure. This structure , with 285 staff, has a headquarters in Hay River, and regional centers in Yellowknife, Iqualit, and Inuvik. In 1995/96 , when health , education , social services were experiencing extensive downsizing for budget

considerations, N.W.T.P.C. requested an approximate increase of 12% to its headquarters function cost in a rate submission to the P.U.B. This represented over a million dollars in increased costs.

The company has stated that ongoing costs for two separate headquarters would increase by 3 million per territory. There is no analysis provided with these figures and there seems to be no differentiation between the needs of west and east in terms of structure. Taking the companies figures as outlined in the ministers document of Nov. 24/97, the present cost of maintaining just the corporate headquarters function is already in the order of \$590/annum per customer. This amount is approximately equal to the entire annual electric bill for an average North American customer. This fact alone suggests that an audit of effectiveness should take place. When we accept the companies position without independent analysis, we are not acting responsibly for the future. There is an opportunity at this time in history to move ahead carefully and responsibly.

An independent audit will provide us with answers to redundancy within the existing administration. It can also examine the regulatory environment that over the years has had a tremendous cost to the consumer. Power company officials have admitted that the last rate applications cost the consumer over 3 million.

3. Strategic Planning for Energy Use in the new territories

Electrical energy in the present N.W.T. is dominated by the highest costs in the country. The utility was built with a subsidy system in place that has fostered heavy consumption and large costs to governments. The role that the power company will play after division in implementing positive change to reduce costs and increase self sufficiency is a vital one. To best understand how to make change in the two territories, a strategic plan is essential. Part of that planning must give direction for the kind of management structure that can provide a reasonable vehicle for change. Governments must have a strong measure of influence over investment and policy to accomplish their goals. Communities and consumers must feel more empowered to adopt new ways of living and doing business. Some measure of strategic planning and direction from our legislators would assist greatly in defining the future requirements for each territories power generation and distribution systems.

4. Public involvement process

A stronger public process on this issue could be an excellent tool for the development of stronger energy awareness within the territories. This process should not be driven by the

existing power corporation, but by the legislative assembly

CONCLUDING REMARKS

The draft legislation asks the territorial government on behalf of Nunavut and the new Western Territory to decrease the degree of flexibility and control over their electric power utility. In return they are promised increased financial stability for a business as usual Power Corp. For the indefinite future. The argument of administrative efficiency is unsubstantiated by any independent analysis or by the experience of other jurisdictions.

Our arguments against reduced flexibility and control over the utility include:

a. All the arguments which have been used to justify the division of the territorial government and all of its other boards, departments and agencies. Why is the financial stability of the Power Corp. more important or more sensitive than the stability of health services, social services, education etc.

b. Energy is a major component of the NWT economy especially in the smaller and more remote communities. The era of massive cross- subsidy has passed. Consumers at the local level will have to shoulder greater and greater amounts of the real costs for the electricity they use. It makes more sense for people who are facing inflating energy costs to want greater control and increased flexibility in their generation systems, not less.

c. The world is entering a period of carbon emission management which is unprecedented in history. The electrical systems of the NWT are not only among the most expensive in the world they are also among the most carbon intensive. The two new territories along with every other jurisdiction in Canada will be required to stabilize and then reduce their carbon emissions in the next decade. The achievement of this policy objective will require increased control, flexibility and innovation.

d. Decisionmakers in the two new territories must be given the opportunity to make their judgement on the extent to which their best interests are served by sharing or not sharing the public utility represented by N.W.T.P.C. Any final decision made by this legislature could and most likely be the subject of great acrimony later.

RECCOMENDATION

1. Our reccomendation , in view of the time available to proceed with any action on this issue within the division timetable , would be to move to two separate corporations ,with geographic division of assets and liabilities , with management services being provided to the Nunavut corporation from the western corporation for a specific period of time, 2003 or what can be deemed appropriate. This will provide ample time for the necessary public process, as refered to in this document, to be undertaken by the new governments. It would also ensure an orderly and efficient transfer period, for any decisions that the governments could take.

**Presentation
to the
Legislative Assembly's
Standing Committee
on Government Operations**

**Amendments to the
*Power Corporation Act***

Jack Rowe
Mayor
Town of Hay River

January 15, 1998

Presentation
Standing Committee on Government Operations
Amendments to the *Power Corporation Act*

Mr. Chairman, Members of the Committee

I am here today to make a presentation, on behalf of the Town of Hay River, with respect to the proposed amendments to the Power Corporation Act, which will allow for continuance of the NWT Power Corporation as a single entity after April 1, 1999.

The Town of Hay River has previously passed motions of support, provided a letter of support to the NWT Power Corporation and took a Resolution forward to the NWT Association of Municipalities endorsing the principle of maintaining the NWT Power Corporation as a single corporate entity after division in 1999.

We have provided this support based on the following fundamental beliefs:

- 1) If the NWT Power Corporation will be split into two separate entities after division there will be a requirement for two separate headquarters, for which the cost of operating each headquarters, will have to be paid for by the Western Arctic and by Nunavut. The studies which have been completed by the NWT Power Corporation forecast that the division of the NWT Power Corporation will result in an increase in rates of approximately 5% in the Western Territory and 8% in Nunavut. In addition there will be a one time start up costs for Nunavut which could approach \$10.0 Million.

- 2) A split of the NWT Power Corporation will reduce the already limited ability of a northern company to attract professional staff, as career opportunities would be seen to be limited for advancement in two smaller corporations.
- 3) If the NWT Power Corporation is to be split, the ability of the new corporations to negotiate pricing on large consumable products like fuel, will be reduced, resulting in an increase in rates.

While the Town of Hay River has supported the NWT Power Corporation's plan to stay as a single entity based on the foregoing, it does not mean that we have not looked at many of the other issues associated with this plan.

As a utility, the NWT Power Corporation is a very small entity. If the NWT Power Corporation is to be divided into two smaller corporations, there will be a greater possibility that the larger communities may have their utility operated by private sector firms for the provision of service. If this situation occurs, the tax exempt status of a Crown Corporation will be lost. The loss of tax exempt status could add up to \$7.0 Million to the cost of providing electric service to the residents of the two new territories.

The issue of cross subsidization of costs by one territory over another, is a matter that the Public Utilities Boards of both the Western Arctic and Nunavut will have to continue to be vigilant. Due to the fact that the Public Utilities Board of the Northwest Territories has already approved of the NWT Power Corporation's community-based rates, it will be less likely that cross subsidies will occur if the NWT Power Corporation is left intact.

The issue of the equitable distribution of shares, assets, and profits to each of the shareholders is a matter that will have to be agreed, such that each territory is satisfied that their own best interests are served.

What it basically gets down to, is if we feel that as Northerner's, we will to be able to continue to work closely together after division to ensure that the interests of all residents of Nunavut and the Western Arctic will be met in the most effective and cost efficient manner.

I would like to thank the Standing Committee for this opportunity to provide the Town of Hay River's position on this very important matter.

Thank You

Jack Rowe

Mayor

January 15, 1998

TO: Standing Committee on Government Operations

FROM: Mayor Peter Martselos, Town of Fort Smith

SUBJECT: Bill 1 – Power Corporation Act

I would apologize for being unable to attend the hearing with respect to the Power Corporation Act. However, through our MLA I hope that our brief comments can be read into the record today.

Our review of the proposed Act leaves us wondering jus what is the government proposing???

It would appear on the surface that in exchange for unsubstantiated financial stability the government is proposing to exchange the flexibility and control that we the people presently enjoy through our legislators over our utility and hence our energy futures in perpetuity.

We must concur with our MLA and our former Mayor that the proposed legislation is severely flawed.

Both presenters either have or will very shortly outline a number of sound reasons for the concern that exists in our community with respect to this legislation.

Surely there are other options to a single Power Corporation conducting business as usual – at the very least we should have two separate entities with administration services provided by the western territory for a specific period of time.

Why aren't we, the people, the owners of the utility, being provided an opportunity to review alternatives to the status quo that will effect our lives for a very long time to come???

The proposed Act is seen as somewhat self serving when one considers the driving force behind its development appears to have been the power corporation itself, interested in maintaining the status quo and therefore taints the whole process from the outset in our view.

Such a serious piece of legislation demands a fair and impartial review of the present structure so that the residents of both territories are assured they are getting the best possible delivery option available to them.

The Government has been leading us all down a path of community empowerment – the opportunity to manage and provide services at the community level without senior government intervention.

I ask, where in this piece of legislation is there a provision for empowerment and self-sufficiency?? It simply does not exist; in point of fact we feel that our opportunities for energy management, will be severely and negatively impacted by the legislation as presented.

Once the two territories are created the management of the utility becomes diluted and processes are thrown askew. With two owners, neither government will have the autonomy over its own utility that we presently enjoy.

Clearly decisions have been made by all other government departments, boards and agencies to set up parallel structures in both territories...questions beg to be asked why is the Power Corp untouchable??

Or better yet if this is so financially beneficial to both territories - why in heavens name are we forming two governments in the first place.

In closing we ask the Committee at a very minimum impose a mandatory review process in the legislation as suggested by MLA Miltenberger within a specific time period.

Thankyou.

Presentation of the Union of Northern Workers

to the

Standing Committee on Government Operations
Legislative Assembly of the Northwest Territories

concerning

Bill 1: *Power Corporation Act*

and

Bill 2: *An Act to Amend the Pubic Utilities Act*

15 January 1998

List of Appearances:

Georgina Rolt-Kaiser
Regional Vice-president
Union of Northern Workers
Suite 208, 31 Capital Drive
Hay River, NWT X0E 1G2

Introduction:

Thank you for the opportunity to make this brief presentation on Bills 1 and 2. Because the Union of Northern Workers has been working closely with management at the NWT Power Corporation for much of the last year, we have become quite familiar with many of the issues and difficulties in accommodating the division of the Territories. But before getting into the formal part of our presentation let me first introduce myself.

My name is Georgina Rolt-Kaiser and I am the UNW Regional Vice-president for the Hay River Region. I have been chairing the union side of the special joint union-management committee established to prepare for the changes to the structure of the Power Corporation.

Bills 1 and 2:

Now to get on with the substance of our submission. There are only a few points I want to make on behalf of the union and our members who work for the Power Corporation.

Firstly, I should make it clear that we are the legitimate voice of these workers. The PSAC/UNW enjoy a nearly unanimous sign-up rate among Power Corporation workers from both the eastern and the western parts of the current Northwest Territories. It was partly for that reason that we worked so hard to ensure that the present collective agreement would contain language that would facilitate our continued role in the enterprise. Similarly, the strong support among our membership made it even more important that we participate positively in the joint committee with management.

Certain principles underpinned our position throughout this period:

1. The existing collective bargaining relationship had to be continued. This involved two components: first, due to the broad support we enjoy, we considered it essential that the UNW/PSAC continue to be recognised as the bargaining agent for Power Corporation employees, and secondly, it was important – to ensure a smooth transition – that a contract be in place that accommodated the transformation to the new corporate structure.

As an aside, the union is satisfied to have the future bargaining regime regulated by the *Canada Labour Code* instead of the *Public Service Act*. We have experience under the federal *Act* and foresee no difficulties making the transition.

2. We were very concerned during the early days of this planning process that there may be a serious upset in the employment tenure of our members in either or both of the two new Territories. On behalf of the members, and the Union, let me express our pleasure and acknowledge the commitment on the part of the Corporation and its owner[s] to not only retain the present workforce, but apparently even to increase it. In the union's opinion, public ownership of enterprises such as the Power Corporation is a model for good economic development in the North. We encourage our elected officials in both new Territories to keep this model in mind as they consider future economic development policy.
3. The final point I want to address is one that concerns what must be deemed to still be a "work in progress". As you know, members of the NWT public service are eligible for pension coverage under the federal *Superannuation Act*. When the new corporate entities are created and the workers are removed from the jurisdiction of the *Public Service Act*, their eligibility for superannuation ends. Through our talks with the Corporation, we have been promised that a comparable pension plan – one which "mirrors" the present plan – will be established before division. Assuming the continued good faith of the parties, and the eventual achievement of the stated goal, this course is acceptable to the Union.

Conclusion:

That concludes my presentation. In summary, I think I can say without fear of contradiction, that the Union of Northern Workers supports the course that is being followed with regard to the future of the NWT Power Corporation.

If there are any questions, I would be pleased to try to answer them.

Mr. Chairman, my name is Jake Ootes, and I appear before you today as the MLA for Yellowknife Centre.

I asked for an opportunity to address the committee today because I wanted a chance to explain why I feel it is in everyone's best interests for the Power Corporation to remain one entity after the creation of Nunavut in 1999.

In the past few months, all of my constituents have been plunged into uncertainty, as the economy has taken a wild turn.

Two large mines, Lupin and Ptarmigan, have closed indefinitely due to plummeting gold prices.

Two of the city's biggest taxpayers, Con and Giant mines, have laid off nearly 160 workers in the past six weeks as they try to remain open.

These layoffs come on top of the territorial government's elimination of nearly 470 some jobs in Yellowknife in the past couple of years.

In this uncertain economy, one thing all of my constituents share is a desire to keep costs low.

No one wants to pay more for their power.

And paying more for the same level of service, or even, possibly, less service, is a distinct possibility if the Power Corporation were to split into two companies.

The Minister responsible for the Power Corporation, the honorable Charles Dent, has told this committee in his presentation that the splitting of the Power Corp would result in a five per cent rate hike in the west, and a seven per cent rate hike in Nunavut.

It is my fervent belief that the NWT Power Corporation would best serve Northerners if it remained one entity after the creation of Nunavut in 15 months.

The Power Corporation's mission statement calls on the utility to "provide a safe, reliable, and cost effective supply of electricity for the people of the Northwest Territories," and there is no reason to think this mandate should change once the NWT splits into two.

The Power Corp itself recognizes the merits of remaining one entity after division.

And the Nunavut Implementation Commission has, in both Footprints reports, identified a need for one power corporation to continue serving both regions after 1999.

The company employs 295 northern residents, 45 per cent of whom meet affirmative action criteria.

The customer base takes in government, major companies like mines, and small community-based businesses, as well as thousands of private citizens.

It is my belief that splitting the Power Corp would effectively destroy the economies of scale, and lead all customers, in the east and in the west, to pay substantially higher rates for basic electrical service.

This is not acceptable to Yellowknife residents.

There are nine thousand customers in the Nunavut region, and 17 thousand customers in the west, of whom about 8000 are served indirectly in Yellowknife and Hay River.

Nunavut generates about 45 million of the Power Corp's 102 million dollars worth of revenues each year.

It is my feeling that any division of assets should take this disparity into account.

There are other economic arguments to be made in favor of keeping the Power Corp whole, as well.

Running two head offices and having two staffs is expensive.

We also save money on bulk fuel purchases when we can buy one enormous volume instead of two smaller volumes.

We are small players on the world scene, and to make ourselves even smaller and less cost effective is not economically and politically wise.

I don't think there's anyone in this room who feels paying more for less is a smart idea.

And I encourage all of you to consider that before making a final decision on the NWT Power Corporation's future.

Thank you.

December 23, 1997


Roy Erasmus
Chair
Standing Committee on Government Operations

RE: Bill 1 - Power Corporation Act

Attached are some of the concerns I have heard regarding the proposed new Power Corporation Act. I fully support these concerns and believe we need to approach this legislation with care and caution. A hasty decision could have serious implications for my constituents and the residents of the western Territory.

I appreciate the opportunity to comment on the Bill as the MLA for Thebacha.

Sincerely,



J.M. MILTENBERGER
MLA THEBACHA



SUBMISSION TO THE STANDING COMMITTEE ON GOVERNMENT OPERATIONS

BILL 1 - POWER CORPORATION ACT

Bill 1 - the Power Corporation Act is the first major piece of territorial legislation related to the creation of two new territories. As MLA for Thebacha and a western resident, I have some serious concerns about the Act as proposed and the companion Unanimous Shareholders Agreement (USA).

1. The lack of options presented for consideration.

For almost a year, Members of the Legislative Assembly have been asking to see all of the options available for dealing with the Power Corporation. The extent of options provided was a cursive reference during a general briefing by the Corporation many months ago. The public has only seen the option presented in Bill 1. Many of my constituents are not yet convinced that this is the only option or that this is the preferred way to proceed. The consistent refusal of the Corporation to provide a clear and balanced review of all division options leaves questions about the path proposed in the Bill.

2. The need for automatic review by the two new governments.

The arrangement set out in the Bill is intended to last indefinitely. I do not feel we should be making this type of binding agreement on behalf of the two new governments. To my mind, there has to be a clear review period (perhaps every three years) and process stated in any agreement. At this point, either party could decide to end the agreement. This would provide stability during the actual creation of two new territories but would not commit either territory to a long term deal.

3. The commitment to mutual liability

This section dealing with mutual liability is not clear. I believe there should be more clarity in defining who is responsible for what. This is particularly important with the high costs associated with potential environmental liabilities, both past and future, and the future implications of limits on carbon gas emissions.

4. Cross-subsidization between the territories

There is no reference in the Bill or the USA to the distinct operational units, east and west, that MLAs were assured would be in place. This raises the question of cross-subsidization in power rates between east and west. This is a concern for the west where, generally power costs are less than in Nunavut. It is critical that western consumers are not subsidizing Nunavut consumers and vice versa. Without the requirement for two separate operational units, capital distribution is also a concern. Again, neither territory should be subsidizing the capital needs of the other.

5. Dispute resolution

The USA proposes a fairly complicated arbitration process. I have no confidence that the two parties will be able to resolve disputes in a reasonable timeframe under the proposed process.

6. Conflicting priorities

The arrangement does not address the potential for conflicting priorities between the two governments. Given the very different geography and demographics, it is distinctly possible that priorities for capital development, exploration of alternate energy options, energy-efficiency goals and other key issue may differ. The shared corporation model does not encourage a territory specific approach.

With division only fifteen months away, there is a need to start making the necessary legislation changes. However, before we move to quickly on the new power corporation structure, the Standing Committee should ensure that this is truly the best option. In making this assessment, I encourage you to give serious consideration to the concerns I have raised along with those you will hear from others.



J.M. MILTENBERGER
MLA THEBACHA

Did you have a written presentation that you wanted to hand out? No, thank you. Mrs. Groenewegen could you start out by introducing yourself for the record please.

MRS. GROENEWEGEN: Yes. Thank you, Mr. Chairman. Mr. Chairman, as you know, most of you, my name is Jane Groenewegen and I am here today as the MLA for Hay River to speak to the issue of keeping our power rates as low as possible, keeping the quality of service as high as possible and to ensure that we deal with the future of the Northwest Territories Power Corporation in the most business like fashion possible. Like many northerners I pay a power bill for my home and business, have done so for many years and will probably continue to do for many years to come. I can also say that I along with my predecessors, the late Honourable Don Stewart, a board member of the Northern Canada Power Commission for many years and a strong advocate of devolution of this crown agency to the northern people that it served and also the Honourable John Pollard, as Mayor and MLA for Hay River, strongly supported and worked hard for the establishment of a northern owned utility. As a member of the first board of directors from 1988 to 1991, I believe that I have first hand knowledge of the challenges that the new, acquired and established Northwest Territories Power Corporation was up against and what any new, northern utility would face.

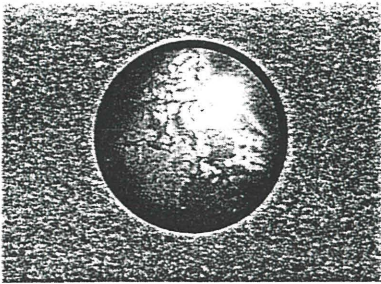
We started with the huge task of staffing up the new headquarters team with the help of only 11 of the former NCPC staff, from the more than 100 in the Edmonton office. At that time, as the president of the Chamber of Commerce, lobbying efforts were undertaken with the Mayor and MLA and we were so proud to see the headquarters building go up in our community and though I could articulate the virtues of Hay River for a long time, I would not be truthful if I did not admit that the task of attracting very specialized professionals from a competitive market in southern Canada together with putting together a team of northerners was no small feat. But after the transitional pains, I am happy to say that the team has joined life in the North, and is an integral part of the development of our community. As a board, we faced a situation where the quality and reliability of service had hit bottom. Some of the plants were in such bad and dangerous condition that they should have been condemned. But it is a credit to people like Jim Robertson and the Honourable Nellie Cournoyea, and particularly the people at the front lines on the job, many of whom are still on the payroll today that the plants managed to keep operating. We tackled the job with aggressive investment and upgrade plans that averaged about \$20 million a year for the first few years. And we have all heard about or experienced the instances of power outages, but no-one can deny that they are now fewer and farther between as the reliability of service has improved. We streamlined administration, strengthened the regional offices and saw the beginnings of the public regulatory process that would bring full accountability for the utilities cost and terms of service into the hands of the customers.

We further worked on growing our own workforce to the point today where the corporation can claim that 45 percent of the employees are aboriginal or long-term northerners. Along with a very successful record of promoting middle and senior

management from within. The NWT Power Corporation is doing its job financially, having returned a dividend to the government that has so far covered a rapidly escalating subsidy program and is paying its obligations without any direct injection of tax payers money. Mr. Chairman, my point in this is that the corporation has more than achieved its goals in the first ten years, while continuing to mature. Now, faced with the issue of division, the government has put forward a plan with the objective of continuing that performance. Dividing the corporation, splitting the workforce and for Nunavut, incurring the additional tasks and costs of creating their own utility at this time can be avoided. I support the concept of a shared business basis for the corporation as it clearly is the best way to avoid extra costs and continue a profitable company that can earn a fair return for both governments.

Even in my riding, which is amongst the least expensive in the NWT for power rates, any measures we can take to control an avoidable increase in cost should be taken. This advantage is amplified as you look further out to the more remote communities. Do I have an interest in keeping the headquarters and the people in Hay River? Of course I do, but more importantly, this plan is an advantage to the cost and continuing reliability that has a benefit to every consumer as the west and in Nunavut.

Mr. Chairman, I would also like to lend support to the amendments proposed to the Public Utilities Act. I understand that unlike sharing a business, governments should not share regulatory boards. But the proposal to allow for joint panels to hear issues relating to transborder matters seems a responsible way to manage this important function. Mr. Chairman, there are many economic uncertainties facing the north at this time. Issues related division, financing of division, issues related to world prices of commodities and minerals, which sustain much of our economic activity in the North and I could go on. For every northerner, and for us as leaders, these issues concern us. I believe that the plan to share, as partners, the Northwest Territories Power Corporation between the west and Nunavut is a plan we can have confidence in. As the first of many division agendas to come forward, this one can demonstrate how the two new territories, although separate and unique can work together constructively and positively on services which are absolutely vital to us all. That is the end of my presentation. Thank you, Mr. Chairman.



ᓄᓇᓂᓪ ᓂᓴᓂᓴᓂᓄᓪ ᓂᓴᓄᓂᓄᓪ

TATJA KAMISINAGOLAKTOP TITIGAKVIA

OFFICE OF THE INTERIM COMMISSIONER OF NUNAVUT

BUREAU DU COMMISSAIRE INTÉIMAIRE DU NUNAVUT

**SPEAKING NOTES FOR JACK ANAWAK,
INTERIM COMMISSIONER OF NUNAVUT**

TO THE STANDING COMMITTEE ON GOVERNMENT OPERATIONS

ON

**BILL 1, POWER CORPORATION ACT AND BILL 2, AN ACT TO
AMEND THE PUBLIC UTILITIES ACT**

**MARCH 31, 1998
IQALUIT, NT**

Mr. Chairman, members of the committee, thank you for this opportunity to appear before you.

At this time, I would like to introduce the people who are here with me today.

David Kravitz is my former Principal Secretary, now the new Nunavut Deputy Minister of Public Works, Telecommunications and Technical Services.

Lois Leslie is Chief Legal Counsel for the Office of the Interim Commissioner.

David Stout is legal counsel from the firm of Nelligan Power retained by my office to assist with this file.

I will begin with a general introduction to the issues as we see them.

I will provide an overview of our position on the proposed model for a shared power corporation between Nunavut and the Western Territory.

David Stout will follow with a more detailed description of our concerns.

Mr. Chairman, members of the committee, we are pleased to be here to present our views on the proposed model and legislation.

We are pleased to have this opportunity to outline our concerns to you and put forward our suggested alternative.

MANDATE OF THE INTERIM COMMISSIONER OF NUNAVUT

I want to comment briefly on my mandate as Interim Commissioner of Nunavut.

My role, and the legal authority attached to that role, is outlined in Part IV of the *Nunavut Act*.

A Letter of Direction signed by the Minister of Indian Affairs and Northern Development, dated April 17, 1997, provided more detailed instructions.

I am responsible for putting in place the administrative framework for the new Nunavut Government.

My mandate includes arranging for the key personnel, systems and services that are required for the Nunavut Government to function on April 1, 1999.

I am directed to act in the best interests of the people of Nunavut.

The Letter of Direction specifically states, and I quote:

"In carrying out your role and in exercising your authority, you are to be guided by the best interests of the Government of Nunavut and the residents of Nunavut."

The bills before us today have been examined by my office with the best interests of Nunavut in mind.

CONSULTATION PROCESS ON BILLS 1 AND 2

While I do not want to dwell on the consultation process regarding Bills 1 and 2, I do want to register our dissatisfaction with that process to date.

The legislation and its associated documentation was developed entirely without the involvement of my office.

My office was advised of the existence of the legislation in a letter dated October 21, 1997, which informed us the bills were to be tabled that day.

On November 7, 1997, I wrote to the responsible Minister requesting an opportunity to review the documentation associated with the legislation, before that documentation was tabled.

We were not given the opportunity to review the documentation in advance.

In fact, my office was not provided with the draft unanimous shareholders agreement, articles of continuance and proposed By-law 1, until the end of November.

No options other than the current proposed model were ever discussed with my office.

We were, in effect, presented with a "fait accompli".

On December 4, 1997, in a letter to the Division Secretariat, we set out our initial concerns with the proposed model.

Our concerns remain, and in fact, have grown.

PROPOSED MODEL

My mandate is also relevant, in another way, to the proposed model before us.

My instructions, as expressed in the Letter of Direction, are to implement the organizational model set out by the Nunavut Implementation Commission. Any significant modification to that model requires the agreement of the Parties.

As you know, the Nunavut Implementation Commission recommended a shared Power Corporation.

The recommendation of the Nunavut Implementation

Commission says, and I quote:

"... the NWT Power Corporation...should continue, for the indefinite future, to operate as [a] "shared" organization...under the joint political control of the Nunavut Government and the GNWT or its successor."

This recommendation received the general endorsement of the Parties to the Nunavut Political Accord, and it is the one that guides me.

The proposed model for the Power Corporation which is before the Committee does not reflect this recommendation.

The proposed model is not a shared organization under the joint political control of the Nunavut Government and the GNWT or its successor.

I pointed this out to the Parties at the Leaders' meeting held here in January.

The proposed model is not the "status quo".

The proposed model involves significant changes to the purpose of the corporation, its management, its governance, and its relationship with government.

It is a major departure from the "status quo".

The model denies Nunavut a fair and effective voice in decision-making.

The proposed share allocation is unequal and Nunavut's appointees on the Board of Directors are in a minority position.

It is clear to me that the proposed model is not in the best interests of the people of Nunavut.

POSITION OF THE OFFICE OF THE INTERIM COMMISSIONER

Since the end of November, when my office received the documentation related to the legislation, my staff and legal counsel have worked to obtain and review information that would assist us in further developing our position.

My office has retained the services of Nelligan Power and Ernst & Young to assist us in this work.

Our analysis to date suggests more questions than answers.

To our knowledge, no analysis has been done by any of the parties, which indicates that the proposed model is a fair and appropriate arrangement for the long term.

The information needed to decide on an appropriate share arrangement or division of assets and liabilities is lacking at this time.

We do not have the information we need to determine what the implications of a particular decision might be 10 years from now.

Mr. Chairman, I have a duty to ensure that any decision on this matter is made in the best interests of Nunavut.

The GNWT has a duty to ensure that any decision made is in the best interests of both future territories.

In order to carry out our respective mandates, we need to understand the consequences of the decisions to be made.

It is my understanding that earlier presenters have told the committee that a full and proper analysis of options by legislators, interest groups and the general public has not occurred.

A full and proper analysis of all relevant information – information, which as I pointed out earlier, is lacking at this time, needs to be undertaken.

An independent analysis is necessary in order to make a responsible decision that best meets the needs and interests of the future territories, and has the support of residents.

The analysis proposed by my office would examine a number of options, including the proposed model, against a number of variables, such as:

- population trends
- projected industrial growth
- environmental liabilities
- plans for equipment replacement over the next 10 years
- future dam construction, and
- tax implications

Until further analysis and consultation has been done, Mr. Chairman, I cannot accept the proposed model.

An proper decision in the best interests of Nunavut requires more and better information.

ALTERNATIVE INTERIM ARRANGMENT

While more work needs to be done, I recognize that April 1, 1999 is approaching rapidly and arrangements must be in place in both territories upon division.

My office is proposing that an interim arrangement be agreed to for the first one to two years after division.

The interim arrangements would maintain the status quo to the extent possible.

In other words, the current NWT Power Corporation would be shared between the two territories until such time as the two governments agree on an alternative arrangement.

In our view, this can be accomplished easily through simple amendments to the NWT Power Corporation Act providing for a shared arrangement.

The necessary analysis of options would continue and would be presented to the new governments after division.

Peter M. Cleveland, F.C.A.
Direct Dial: 613 598-4301

March 27, 1998

Mr. Jack Anawak
Interim Commissioner of Nunavut
Office of the Interim Commissioner
P.O. Box 1750
Iqaluit, N.T.
X0A 0A0

Dear Mr. Anawak:

Your office has requested us to comment upon the nature and extent of review necessary to determine a fair and equitable allocation of ownership in the Northwest Territories Power Corporation — between future governments of East and West. We wish to report on these matters.

Procedures

We met with representatives of your office and Nelligan/Power to discuss the nature and understanding of the proposed split of Northwest Territories Power Corporation (“NTPC”). In addition, we reviewed certain data provided by NTPC through your office. Generally, this included the Power Corporation’s own allocation of:

- fixed asset additions from 1988 to 1997;
- total debt between East and West;
- original cost of fixed assets, as at March 31, 1997;
- total 1997 kilowatt hour sales for each proposed territory;
- projected 1998 kilowatt hour sales;
- projected customer base for 1998;
- operating revenues for 1997;
- projected 1998 fuel expenditures;
- projected capital acquisitions 1998-99;
- population;
- square kilometers of land and water.

The NTPC data was not audited or verified in any way by ourselves. However, we reviewed the data, as allocated between East and West, and calculated percentages to determine weightings

between East and West. We set out in Table 1 below the summary of historical data allocation.

| Table 1 Northwest Territories Power Corporation Historical Data Allocation | | | | | |
|--|---|-----------------------|-----------------------|---------------------|------------------------|
| | Data Category | West | East | Head Office | Total |
| 1. | Fixed Asset Additions (1988-97) % | \$144,997,113 64.5 | \$72,303,932 32.1 | \$7,664,650 3.4 | \$224,965,695 100.0 |
| 2. | Debt % | \$102,153,598 69.8 | \$39,953,131 27.3 | \$4,235,271 2.9 | \$146,342,000 100.0 |
| 3. | Original Cost of Fixed Assets, March 31, 1997 % | \$227,330,000 64.9 | \$110,506,000 31.5 | \$12,637,000 3.6 | 350,473,000 100.0 |
| 4. | Total 1997 Sales (KW.h) % | 362,210,000 78.2 | 100,741,000 21.8 | | 462,951,000 100.0 |
| 5. | Projected 1998 Sales (KW.h) % | 359,552,000 76.5 | 110,344,000 23.5 | | 469,896,000 100.0 |
| 6. | Projected Customer Base 1998 (* includes 2 wholesale accounts that retail to 8,752 accounts) % | 7,507* 45.1 | 9,128 54.9 | | 16,635 100.0 |
| 7. | 1997 Operating Revenues % | \$57,990,716 56.5 | \$44,591,574 43.5 | | \$102,582,290 100.0 |
| 8. | Projected 1998 Fuel Expenditures % | \$18,365,000 55.1 | \$14,989,000 44.9 | | \$33,354,000 100.0 |
| 9. | Projected Capital Acquisitions 1998/99 % | \$4,721,000 51.7 | \$3,617,000 39.6 | \$788,000 8.7 | \$9,126,000 100.0 |
| 10. | Population % | 39,672 61.6 | 24,730 38.4 | | 64,402 100.0 |
| 11. | Square Kilometers (Land and Water) % | 1,171,918 35.6 | 2,121,102 64.4 | | 3,293,020 100.0 |

Concerns

- There is not an abundance, if any, of precedents for splitting shares or assets of power corporations among territories. Given the extraordinary importance of power in the North, we believe the parties ought to thoroughly understand the ramifications of any final allocation decision.
- There is considerable danger in relying entirely on historical data to allocate shares or assets. An allocation based on this data only may not appear reasonable in future if certain events take place. For illustration purposes, the East may attract more industry and population

growth in the next fifteen years than the West — or vice versa. It may require additional plants, transmission lines of sorts, and other equipment that would result in one party contributing more to the Power Corporation than the other. Therefore, the parties will want to analyze a number of agreed upon “what if’s” to ensure they completely understand the impact of certain events taking place in future.

- We prepared, from Table 1 above, three composite indices — set out in Table 2 below.

| | Data Category | West | East | Head Office | Total |
|----|---|---------------|---------------|--------------|---------------|
| 1. | Composite \$ Index Total (1+2+3+7+8+9) | \$555,557,427 | \$285,960,637 | \$25,324,921 | \$866,842,985 |
| | Composite Weighting % | 64.1 | 33.0 | 2.9 | 100.0 |
| 2. | Composite KW.h Index Total (4+5) | 721,762,000 | 211,085,000 | | 932,847,000 |
| | Composite Weighting % | 77.4 | 22.6 | | 100.0 |
| 3. | Composite Population Index (6+10) | 47,179 | 33,858 | | 81,037 |
| | % | 58.2 | 41.8 | | 100.0 |

The first composite is simply the total of all dollars allocated to each party, the composition of which serves no other logic than weighting volumes of power dollars between East and West. Because it combines projected sales with projected expenses, it is a hybrid and hence, regarded as a composite as opposed to an exact representation. Nevertheless, the weighting of all data observed shows an approximate 65%/35% West/East split.

The second composite is in kilowatt hours. The composite weighting suggests 77% for the West and 23% for the East.

The third composite is the population index which includes both individual population and the projected customer base for West-East. This composite suggests 58.2% for the West and 41.8% for the East. The square kilometer allocation is 35.6% for West and 64.4% for East.

These composite indices are too simplistic to draw a conclusion on an appropriate model because they do not reflect a number of matters that may impact future activity. More particularly:

- Any outstanding negotiations for self government;
- The loss of a major franchise that significantly alters historical asset allocation or kilowatt hour usage;
- Environmental liabilities with respect to oil spills or other unknowns. The issue is who pays for environmental clean-up or assumes risk for potential liabilities such as dam leaks;

- Where will the majority of the equipment replacement be required during, say, the next ten to fifteen years;
 - The impact of any future dam construction;
 - Projected industrial growth in both territories;
 - Population trends;
 - The impact of partnerships that may exist between the Power Corporation and organizations in one territory or another;
 - The history of power outages in each territory and, consequently, the level of maintenance required in each territory;
 - Potential tax implications of any share or asset split;
 - The effect of mine closures.
- Determination of the status of any of the above concerns may affect the selection of the model used to allocate interest in NTPC. Status of matters may, in fact, indicate other models should be considered.
 - Of great concern will be the effect of employment in each territory. Will the model selected create major social issues such as employment, community and business development matters? What training will be required? What cultural differences, if any, exist between East and West that may impact the selection of an appropriate model? These are just a few of the questions that would be considered when determining a model which would be fair and equitable — and in the best interests of both future governments.

Recommendation

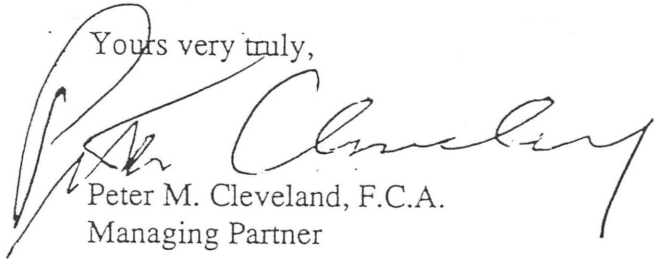
To consider a model that is in the best interest of both future governments and address concerns for the impact, we recommend a consultant be engaged to:

- interview key officials to determine status of matters listed as concerns;
- determine, from appropriate parties, the status of legal liabilities;
- develop an understanding of the impact on jobs, training, social issues and culture, in addition to financial considerations;
- examine alternative models for allocation;
- hold a meeting(s) with appropriate parties from the East and West to facilitate an agreement on an acceptable model to both parties.

If we were asked to complete this review, we would anticipate completion by October 31, 1998, assuming availability of officials and documents for review. The process would be clearly laid out, in advance, as to who would be interviewed, information to be reviewed and the nature and

type of report that would be submitted. We would be pleased to undertake this assignment should you request.

Yours very truly,



Peter M. Cleveland, F.C.A.
Managing Partner

:jk

PRESENTATION OF
NUNAVUT TUNNGAVIK INCORPORATED

TO THE
STANDING COMMITTEE ON GOVERNMENT OPERATIONS
OF THE LEGISLATIVE ASSEMBLY OF THE
NORTHWEST TERRITORIES

REGARDING THE NORTHWEST TERRITORIES POWER CORPORATION
PLAN FOR DIVISION

MARCH 31, 1998 - IQALUIT

GOOD MORNING Mr. Chairman and Members of the Committee, my name is Laura Gauthier, and I am the Manager of Policy Development and Research for Nunavut Tunngavik Incorporated. I am here today to represent NTI in its presentation to this committee on the issues surrounding the future of the Northwest Territories Power Corporation. Mr. Kusugak regrets that he will not be here to make this presentation and asks that you accept his apologies - his absence is due to very heavy scheduling demands.

As you are certainly aware, tomorrow is April 1st, one year from the creation date for Nunavut. The Executive of Nunavut Tunngavik and much of the senior staff are in Ottawa to participate in the current lobbying and awareness campaign which will look for multi-party support for the many initiatives required over the next year. These include the anticipated amendments to the Nunavut Act and some of the funding initiatives which will affect both of our territories.

I have also been asked to assure the Committee that we have listened carefully to the presentations made by NTPC. Their proposals have been the subject of sustained consultations between ourselves and the Office of the Interim Commissioner. NTPC has provided us with responses to questions we have asked. We have taken their materials and have reviewed them internally on a political basis, with accountants and lawyers who specialize in the field of utilities. There have been both technical and political meetings with the Office of the Interim Commissioner, with Jack Anawak and his staff. The reports of the various consultants used by NTI and by the OIC have been shared between us to insure that any approach was thoroughly reviewed. In sharing and discussing this information we have continued to find new pieces to the puzzle we have been given.

One of the most significant sets of recommendations received by the OIC was from the accounting firm of Ernst and Young. In their letter, dated March 28, they outline a number of areas in which significant amounts of information are lacking, information that is essential for Nunavut to make a reasonable decision about its participation in a business with over \$100 million per year in revenues.

The proposed *Power Corporations Act* contains a number of assumptions which it treats as natural and logical, and which are at the foundation of their proposal, but which continue to cause us concern:

1. The proposal is a long way from the status quo

In a highly intense and collaborative review of the recommendations from the Nunavut Implementation Commission's (NIC) report "Footprints in New Snow", NTI supported the recommendation to maintain the Workers' Compensation Board and the Northwest Territories Power Corporation as shared institutions by the two governments, subject to the right of the Government of Nunavut to terminate an agreement to share these institutions.

Specifically, the NIC report notes that “a number of territorial level public sector organizations that perform highly specialized and technical tasks on a quasi-autonomous basis might be left to carry out those tasks on a “shared” arrangement between the Nunavut Government and the Government of the Northwest Territories, at least for some indefinite period following division. A “shared” arrangement could entail a number of re-structuring options, but any such “sharing” should involve equal political control exercised by both the Nunavut Government and the Government of the Northwest Territories. The Workers’ Compensation Board and the Northwest Territories Power Corporation would lend themselves to being treated in this fashion.”

In the process leading up to the development of this proposal, no other re-structuring options have been explored or presented to signatory parties to the *Nunavut Political Accord*. Although NTI acknowledges that it may be possible to improve the Corporation’s structure and mandate, we do not believe that this is the time to be making those changes. The proposal suggests only one possible corporate structure, and it is very different from the current structure. While we were reviewing the proposed *Power Corporations Act*, it became clear to NTI that other possible structures exist, but are not being considered.

These different options include continuing as a Crown Corporation, division along the lines suggested by the Western Coalition, and division into separately owned asset holding companies with common management. All of these options deserve careful consideration, to verify that the one selected is in fact the best for everyone.

We also recognize that some innovations may be required to make NTPC more efficient. We are not objecting to innovations on principle. But we are concerned that an agreement to allow both Territories to maintain the benefits of NTPC as a unified company – to maintain the status quo – is being used as an opportunity to make major structural changes. Some of these changes may be at the expense of the people of both Territories.

2. Changing NTPC from a Crown Corporation to a Canada Business Act Corporation

Central to the proposal is a change from a Crown Corporation to a Canada Business Act Corporation. The main justification for this change is to make NTPC more business-like, and to give it more control over its own affairs.

A few years ago a proposal to privatize the NTPC was brought forward and was withdrawn in the face of opposition from the public, from a number of MLAs and from the employees' union. It was clear then that people in the Territories wanted a Power Corporation that was efficient, reliable, and profitable, and at the same time responsive to the needs of NWT residents.

While NTI recognizes that the current proposal is not for privatization of NTPC, some of the same concerns arise from the proposed CBCA structure. The new corporate structure seems attractive because it suggests an efficient and business-like relationship between the Corporation and the governments which will be its shareholders. However, the proposed new structure would mean that government would lose some of its existing controls over the workings of the corporation, without gaining much in return.

Again, we are not saying that shifting NTPC to Business Corporation status is a bad idea in itself. We would like to emphasize that, given the lack of independent financial analysis and the short time to Division, we think this is the wrong time to be making such a decision.

3. Taxation

As a Canada Business Act Corporation, NTPC could become subject to taxes it does not now pay. NTPC officials advise that they are seeking an advance ruling on the tax status of the proposed corporation. This has not yet arrived. It seems to NTI that it is a bit late to be obtaining these vital pieces of information. What if the Assembly enacts this legislation only to

find that the favorable tax status is not available? What alternatives will then be possible? We know that this project will not go ahead with a negative tax ruling...but NTPC has not provided us with any options. And NTI has not been satisfied by informal assurances from NTPC officials that no taxes would be due.

4. NTPC would be “business-like” but continue to rely on the government

In fact, almost all the benefits of the new structure would go to NTPC rather than to its shareholders. While promoting a more business-like structure to the corporation, NTPC would continue to rely heavily on government for support. It is not really business-like to require the shareholders' to finance the corporation in the event that funding is not available on the open market. It is the best of both worlds for a company to act independently of its shareholders, declaring its own profits, deciding on the payment of its on executives and board. At the same time it makes the most of its dependence on government, requiring that both the shareholders guarantee its borrowings, and having the right to go back to government for financing whenever it wants.

5. Division of Assets/ Voting Shares

At this point, I would like to return to a point made earlier in the presentation. NTI clearly agreed with the NIC recommendation that “any such “sharing” arrangement should involve equal political control exercised by the Nunavut Government and the Government of the Northwest Territories.”

NTPC has presented its argument for a 60/40 split in shares, based on an analysis of assets and profits generated regionally. It appears that they have not included the accumulated debts of the corporation, about ¼ of which are in the West. In any case, share structure can be created to account for the strengths and liabilities of each territory, including an unequal split of profits. However, NTI cannot imagine any circumstance in which we could recommend anything less

than a 50/50 split in voting shares. It would be irresponsible to recommend a permanent disadvantage in voting shares. From NTI's point of view, if the decision is to go to a corporate structure which involves a share split, control on a 50/50 basis represents institutionalized trust.

6. The proposal doesn't include all the relevant information

NTI is also concerned that, no matter how complex the issue looks, the proposal we are reviewing leaves out some of the more complex, and more important issues in NTPC's future. There are a number of major issues here which have not been raised by NTPC in its discussions or presentations:

A. No rate increases?

NTPC has consistently maintained in all of its materials that their proposal will not result in rate increases. This is true, the actual rates will not go up. But the available subsidies will obviously and immediately be affected. When the subsidies are affected, the actual price paid for electricity goes up. When asked, NTPC officials predict that their proposal, without changes to the subsidy structures, would result in increases in the actual costs paid by private users of electricity in Nunavut.

NTI has been given little indication that this is inevitable or preventable. NTPC has not incorporated this issue into the structure it is proposing.

B. Growth scenarios for East and West

The full impact of various possible scenarios for growth in the West still needs to be explored. The demand for Western electricity depends on the price of gold and the future of mines being served. Eastern growth may well be population based, steady and stable. Western growth will be unpredictable and may be in great leaps or losses. These possibilities need to be quantified.

C. Franchises

The issue of franchises exists, and along with that issue, the possibility that NTPC could either expand into or lose whole markets such as the City of Yellowknife and other major consumers south of the lake. These franchises are up in and around the year 2001, and will make a huge difference to NTPC's profits and future;

D. Public Housing

The power subsidies and rates being discussed in this proposal, when they do get mentioned, are the private and commercial rates. The subsidies for Public Housing are much more substantial, and they are paid from a fund controlled by FMBS. They are not mentioned anywhere. When you include subsidies offered to public housing in this mix - a subsidy rate of 90% - then some of the relevant factors for government budgets start to appear. By having NTPC present and propose these changes we have been focused just on the corporation. As a government, Nunavut needs to have time to weigh the choices and their implications for government in other budget areas. Government is one of the largest purchasers of power, for its own uses. Government supports huge numbers of public housing units. None of these items or the effects on these items of the NTPC proposal have been reviewed, in the East or West.

7. The proposal assumes the logic of staying together

The current proposal assumes implicitly that the Power Corporation should remain intact. The main arguments to support this idea are based on economies of scale, and include:

- A. Better borrowing rates
- B. Better prices on fuel purchases
- C. More efficient management
- D. Avoiding costs of new headquarters

A. Better borrowing rates together - this may be only marginally true. The borrowing rates enjoyed by NTPC are very good but are actually more dependent on the implied Federal

guarantee than on two territories being together or either territory guaranteeing NTPC's debt. As both new territories would still have the implicit federal guarantee, borrowing rates might not be that different. However, maybe research will show that the difference will be very important for borrowing rates - we haven't seen that information.

B. Better economies of scale for purchasing bulk fuel - if this is a major advantage, we could purchase our fuel together without being one corporation;

C. Better economies of scale for management - this is undoubtedly true but could be truer if we get the benefits of even larger management. It could be possible for NTPC or either territory to tender out management or buy it from another utility. This is becoming more common even in the south.

D. Avoiding costs of new headquarters - also means in the long run foregoing the 50 or 60 potential jobs from an Eastern Headquarters. The current NTPC plan is to move exactly zero jobs to the East. In the long run this could be a very expensive way for Nunavut to reduce headquarters costs.

In any case, the whole issue of location of positions requires further study. Using NTPC's numbers, 62 positions would be moved to the East if the Corporation were to divide. At a rough estimate of \$100,000 per position, this amounts to \$6.2 million injected into the Eastern economy. If we assume a multiplier effect, this amount could easily be doubled to over \$12 million. This is a significant figure, and must be accounted for somehow in negotiations for an undivided NTPC.

NTI asserts that in any long-term relationship, a meaningful number of positions should be shifted to Nunavut, to achieve some balance in NTPC's employment levels.

NTI RECOMMENDATIONS

Given the time restrictions to developing and reviewing additional restructuring proposals for a shared power corporation, our options for a shared institution are limited. NTI does not support the proposed *Power Corporations Act*. There are simply too many issues and contradictions in that model for NTI to endorse for Nunavummiut.

This diversity of possibilities was the original reason why the status quo was appealing - it allowed us to go forward without having to sort through all these possibilities. But by proposing a share split and a new corporate format, the NTPC proposal has re-introduced all the issues of division without any of the benefits of independent evaluation.

The window of opportunity for restructuring the Power Corporation is gone for the moment. In the interim, arrangements need to be agreed upon to satisfy the immediate requirements of both Territories until such time that the two Governments can determine a permanent arrangement. We reiterate the stand we have taken on a number of other recent proposals – leave this for the new governments to decide. There is enough for us to do with the urgent and unavoidable changes created by the division of the two Territories. Now is not the time for massive change and re-organization.

NTI therefore recommends:

1. Maintaining the status quo as cleanly as we possibly can, through the development of an Interim Management Agreement for the period of two years, to give the Nunavut Government time to sort it out. The structure of the Agreement should have enough conditions attached to approximate the status quo, as best as possible.

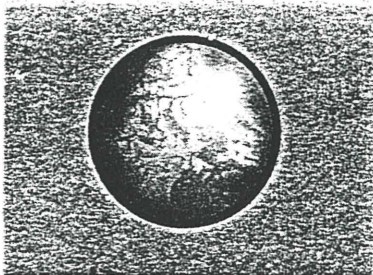
2. Identifying one trustee to hold the undivided ownership of NTPC in escrow, with terms that prevent there from being any major business changes in the short term. This avoids the immediate need to argue who gets 50 or 30 or 60 percent of the corporation, when such arguments may in the long run be unnecessary.
3. Proceeding with the proposal and legislation for a joint Public Utilities Board. In the long run there may be arguments that we need a different structure or that we can contract out the whole task, but for the moment we are committed to preserving the status quo and the PUB is part of the status quo. The joint PUB proposal is adequate to the needs of both territories, whatever happens to the NTPC structures.
4. Committing through the interim management agreement to a process of technical evaluation and financial analysis through an independent and neutral individual or agency, including the analysis of subsidies and factors internal to government.
5. This process be steered between the Office of the Interim Commissioner and the Government of the Northwest Territories , with consultation from Nunavut Tunngavik Inc.
6. Framing the technical evaluation within a time structure which will report back in about 18 months to our governments with recommendations which can be reviewed, approved and implemented at a time when the two governments can function as equals.

There needs to be more agreement and development of common positions, and it may well be possible to have considerably less legislation. I appreciate that this will require some re-thinking on the part of all involved. But there are other, simpler ways to achieve viable continuity for NTPC as a trans-territorial corporation.

NTI is prepared to continue to contribute to that discussion and to promote the necessary decisions as we move toward division.

I thank you for your time and attention and look forward to answering any questions you may have.

Qujannamiik.



ᓄᓇᓂᓪ ᓂᓴᓂᓴᓂᓄᓪ ᓂᓴᓄᓄᓪ

TATJA KAMISINAGOLAKTOP TITIGAKVIA

OFFICE OF THE INTERIM COMMISSIONER OF NUNAVUT

BUREAU DU COMMISSAIRE INTÉRIMAIRE DU NUNAVUT

OFFICE OF THE INTERIM COMMISSIONER OF NUNAVUT
PRESENTATION TO THE STANDING COMMITTEE ON
GOVERNMENT OPERATIONS ON BILL 1, POWER CORPORATION
ACT, AND BILL 2, AN ACT TO AMEND THE PUBLIC UTILITIES ACT

Iqaluit, NT
March 31, 1998

OFFICE OF THE INTERIM COMMISSIONER OF NUNAVUT
PRESENTATION TO THE STANDING COMMITTEE ON GOVERNMENT
OPERATIONS ON BILL 1, POWER CORPORATION ACT, AND BILL 2, AN
ACT TO AMEND THE PUBLIC UTILITIES ACT

Bill 1, *Power Corporation Act*, calls for the repeal of the *NWT Power Corporation Act* R.S.N.W.T. 1988, c. N -2, ("NTPC Act") and the continuation of the Northwest Territories Power Corporation (NTPC) under the *Canada Business Corporations Act*. In considering Bill 1 it is important that the current situation be reviewed in some detail. This will permit a full appreciation of the significant departure from the status quo represented by Bill 1.

STATUS QUO - THE NTPC ACT

In 1988, the Federal Government agreed to sell the Northern Canada Power Commission ("NCPC") to the GNWT and the Yukon. The NWT portion of NCPC was purchased for a sale price of \$1.00 plus the assumption of debt. To facilitate this transaction, the NTPC Act was passed by the GNWT.

NTPC is a creature of statute. Its objects and governance are defined by the NTPC Act. Section 4(2) of the Act states as follows:

The Corporation is an agent of the Government of the Northwest Territories.

Objects

The Objects of NTPC, as set out in the Act are as follows:

- (a) to generate, transform, transmit, distribute, deliver, sell and supply energy on a safe, economic, efficient and reliable basis;
- (b) to supply water and sewerage services;
- (b.1) to undertake programs to conserve energy;
- (c) to ensure a continuous supply of energy adequate for the needs and future development of the Territories; and
- (d) to undertake any other activity authorized by the Executive Council.

Board of Directors

The size and extent of the Board of Directors; membership to the Board of Directors; the Chief Executive Officers of the Board of Directors and the powers of the Board of Directors are all specified in the NTPC Act.

The form and governance of the Board of Directors is found at Section 8 of the Act. The Board of Directors is mandated by the NTPC Act to manage the affairs of the Corporation. Section 8(1) confirms the Board of Directors shall be composed of not fewer than 6 Directors and not more than 10 Directors. The Chairperson and Vice-Chairperson of the Board shall be designated by the Minister from among the Directors.

The Board of Directors is required to take direction from Cabinet. Section 8(4) provides:

The Board, in exercising its powers and performing its duties and the powers and duties of the Corporation under this Act and the Regulations, shall act in accordance with the directions and policy guidelines that may from time to time be issued or established by the Executive Council.

Section 9 of the NTPC Act requires that Directors shall be appointed by the Minister. The selection of the President and the Chief Executive Officer is a decision of the Minister. Section 12(1) provides as follows:

There shall be a president of the Corporation appointed by the Minister, on the recommendation of the Board.

Section 12.1(1) provides:

The Minister may appoint the chairperson or the president as chief executive officer of the Corporation.

Dividends

Currently, under Section 29 of the NTPC Act, the Corporation, through the Board of Directors, is empowered to declare dividends and must do so, subject to the Public Utilities Act and the direction of Cabinet. Subsection 29(2) of the NTPC Act states that such dividends cannot be used for any purpose other than the subsidization of rates for energy or water or sewerage services. Subsection 29(2) reads as follows:

Notwithstanding the Public Utilities Act, the dividends on the common shares shall be applied to the subsidization of rates for energy or water or sewerage services and related administration costs (underlined for emphasis)

Financial Accountability

The NTPC is required by the NTPC Act to be fiscally responsible, fiscally accountable and required to report on its financial affairs in strict accord with the NTPC Act.

Under section 35, the Auditor General is the auditor of the Corporation. The accounts of the Corporation must be audited annually and an Annual Report must be prepared and filed within three months after the end of each fiscal year. All such Reports must be in accord with the *Financial Administration Act*. As well, the Auditor shall report annually to the Minister and the Board. The Annual Report must be filed with the Minister within three months after the end of each fiscal year. In turn the Minister then tables before the Legislative Assembly a copy of this Report at the first session of the Legislative Assembly following the receipt of the Report by the Minister.

BILL 1, POWER CORPORATION ACT - SUMMARY OF SIGNIFICANT CHANGES

Political Accountability

The model contemplated by Bill 1 represents a significant departure from the status quo. Firstly, the corporation is no longer a statutorily established corporation with a Board of Directors appointed by the Minister and having a mandate to act as an agent for the GNWT. The proposed Corporation under Bill 1 becomes a business corporation having as its mandate the generation of profits and having as its jurisdiction the *Canada Business Corporations Act*. Under the proposed model the Board of Directors shall have increased authority to oversee the Corporation and shall not be subject to policy direction from government.

Dividends

The next significant difference is the matter of dividends. Under the proposed model there is no requirement for an annual issuance of dividends nor any restriction on the use to be made of such dividends by the two shareholders. Therefore, there is no requirement to continue to use dividends for subsidization purposes. On the other hand, there would be nothing to prevent either shareholder from utilizing such dividends in this fashion.

In the two presentations made by representatives of NTPC to the Office of the Interim Commissioner, or its representatives, references to dividends would suggest that dividends will indeed issue every year. Historically, of course, this has been the case. The dividends have been required to support the subsidization program. Under Bill 1, the decision to issue dividends would rest exclusively with the Board of Directors. However, as the Corporation will no longer be an arm of Government, but rather will be a profit

generating business entity, the decision to issue dividends and the extent of such dividends will no longer be identifiable to any governmental program, nor will there be any direct accountability to Government. Should the Board of Directors elect to invest significantly in capital expenditures or undertake other steps, which would leave insufficient, retained earnings to issue dividends, then no dividends would issue at all. Neither shareholder would have the right to oblige the Directors to issue dividends at any time.

Financial Accountability

The next significant difference is the matter of the financial accountability of the Corporation. As has been noted previously in other submissions to the Standing Committee, the provisions of the *Financial Administration Act* will no longer apply. There will be no obligation to table any reports and/or financial statements with the Legislative Assemblies of either Government and otherwise be directly answerable to Government, other than in the ordinary course of providing financial reports to shareholders. This is not to suggest the Corporation would have a right to act in a fiscally irresponsible manner. Under the provisions of the CBCA, the Board of Directors would be required to act in the best interests of the Corporation and in accord with a standard of care consistent with the position and with the office. However, the limitations found within the *Financial Administration Act* would no longer be applicable and enforceable against the Board of Directors and the corporation.

Continuance under the CBCA

A continuation under the *Canada Business Corporations Act* is a fundamental change. We believe this to be inconsistent with the recommendations of the Nunavut Implementation Commission (NIC) in *Footprints in New Snow* and *Footprints 2*. At page 39 of *Footprints in New Snow*, the NIC states:

"The first point is that a number of territorial level public sector organizations that perform highly specialized and technical tasks on a quasi-autonomous basis might be left to carry out those tasks on a "shared" arrangement between the Nunavut Government and the GNWT or its successor, at least for some indefinite period following division. A "shared" arrangement could entail a number of restructuring options, but any such "sharing" should involve equal political control exercised by the Nunavut Government and the GNWT or its successor. ... the NWT Power Corporation would lend [themselves] to being treated in this fashion".

At page 40 of Footprints in New Snow, it was recommended as follows:

"The NIC recommends that, for the reasons recited in this section, planning for the start-up administrative capacity of the Nunavut Government should proceed on the basis of the Nunavut Government being equipped with fully functioning headquarters in relation to all departments and agencies. Exception should be made in the case of ... NWT Power Corporation, which should continue for the indefinite future, to operate as [a] "shared" organization under the joint political control of the Nunavut Government and the GNWT or its successor".

Our interpretation of the NIC recommendations in Footprints in New Snow and Footprints 2 was an intention to maintain NTPC as a statutorily constituted corporation answerable to government. It is this interpretation we believe has received the general endorsement of the parties to the Nunavut Political Accord. If it is determined this was not the intention then it is important that this be brought to the attention of all of the affected parties.

COMMENTS ON BILL 1, POWER CORPORATION ACT, - PROCESS

We are concerned that the process, which led to the tabling of Bill 1 in October 1997, did not properly permit a full and complete appreciation of the nature and extent of the changes and the ramifications of such changes to the residents of the north.

The Office of the Interim Commissioner was not involved in the development of the draft legislation, draft By-laws, Unanimous Shareholders Agreement and Articles of Continuance. Indeed, none of the draft documents were provided to the Office of the Interim Commissioner prior to the tabling of Bills 1 and 2. A letter was sent by the Interim Commissioner to Minister Dent on November 7, 1997, requesting that the Minister refrain from tabling further documents relating to Bill 1 with the Legislature until the Office of the Interim Commissioner had had an opportunity to review these documents and further requesting that all relevant information be made available forthwith to the Office of the Interim Commissioner. Copies of the draft By-laws, Unanimous Shareholders Agreement and Articles of Continuance were only received by the Office of the Interim Commissioner at the end of November 1997.

At the presentation provided by NTPC to representatives of the Office of the Interim Commissioner in late November, 1997 and in subsequent discussions with representatives of GNWT and the Minister Responsible for the Power Corporation, Charles Dent, the Office of the Interim Commissioner has expressed concerns about the process and, in a general sense, the proposed model. However, no follow-up discussions or negotiations have taken place between the GNWT and the Office of the Interim Commissioner.

The existing process contemplates that negotiations would be initiated between the Interim Commissioner's Office and the GNWT only after the tabling of Bill 1 and Bill 2. Negotiations were to be restricted to the approval of the allocation of shares and the negotiation of a Unanimous Shareholders Agreement. Like others who have appeared before this Standing Committee on Bill 1, we believe this represents putting the cart before the horse.

COMMENTS ON BILL 1, POWER CORPORATION ACT - CORPORATE STRUCTURE

It is our submission that without further analysis it is not possible to endorse any particular form of model at this time. In support of this position we attach a report from Ernst & Young. Ernst & Young was retained by the Office of the Interim Commissioner to review all information available to our office at this time and to provide comments and recommendations, if at all possible. It is the opinion of Ernst & Young that at this time there is insufficient data and analysis available for any proper decision about either the share allocation as contemplated in the proposed model or indeed to come to a definitive determination of what model should be adopted in the circumstances.

Having provided this caveat, we feel it is nevertheless important to make specific comment on the corporate structure proposed under Bill 1.

Should the proposed model be ultimately adopted, it is our position a significant series of changes must be made to the corporate structure, in particular, to the By-Laws and the USA.

Allocation of Shares

The proposed model contemplates the shareholders of the Corporation shall be as follows:

| | | |
|----------------|---|-----|
| Western Region | - | 60% |
| Nunavut | - | 40% |

While we are not in a position to comment on the appropriateness of the proposed share allocation, the consequence of this ratio of shareholdings is absolute. All matters of representation and effective control of the Corporation are predicated on a utilization of this ratio of shareholdings. Matters of operation, governance, day to day decision-making and so on are all affected by this share ratio. Additionally, this same ratio is to be applied if some time in the future, the parties decide to terminate the relationship and to each undertake the establishment and implementation of separate power supply services to their respective jurisdictions.

We submit that this share ratio, as reflected in the proposed governance, would guarantee that Nunavut would be prevented from having an effective and fair voice in the decision making process.

Board of Directors

The proposed structure of the Board of Directors would be as follows:

The Board will consist of twelve Directors. Six of the Directors shall be appointed by the West; four shall be appointed by Nunavut, the Chairman shall be appointed by mutual agreement between the East and Western Governments and lastly the President is appointed by the Board.

Thus, in every instance, the Nunavut appointees on the Board of Directors will be in the minority. To make this perceived disparity even more evident, a majority of the number of Directors shall constitute a quorum for the transaction of business and any questions on the Board shall be decided by a majority of votes cast.

Unanimous Shareholders Agreement

The current draft Unanimous Shareholders Agreement ("USA") is equally unsatisfactory. Unlike most typical USAs, which contain numerous clauses, which require the unanimity of the shareholders, the proposed draft USA contemplates only three restrictions to the powers of the Board of Directors. The Board of Directors is otherwise unfettered in its decision making powers other than of course the requirement to act properly, in the best interests of the Corporation and in accord with standards of the common law.

The three restrictions contained in the proposed draft USA are as follows:

- (a) No additional voting shares in the capital of the Corporation shall be allotted or issued (provided that nothing herein shall prohibit the directors from issuing non-voting preferred shares).
- (b) There shall be no material change in the nature of the business of the Corporation nor any action taken which may lead to or result in such material change.
- (c) The number of Directors shall not be increased or decreased.

It is not difficult to contemplate a series of examples of issues that could arise. For example, issues such as borrowing, financing, capital expenditures would all be governed by a majority vote of the Board.

We believe the USA fails to provide an acceptable level of checks and balances. It fails to give an equitable voice to Nunavut and, we submit, is inconsistent with the recommendations in both Footprints in New Snow and Footprints 2.

It is acknowledged that Nunavut, if dissatisfied, would have an ability to terminate the agreement and thereby cause a windup of the Corporation. We do not think this is an acceptable fall back position. We believe any form of negotiated arrangement between the two Governments should be premised on a long-term intention and a spirit of long term commitment. The best way to assure long term success and long term commitment is to deal with matters at the outset as opposed to simply leaving the only appropriate remedy to be a rescission of the entire arrangement.

The existing USA does contemplate a form of dispute resolution. However, we submit that the proposed resolution process is inadequate. The relevant clause addresses only situations wherein the parties "disagree as to the application or interpretation of this Agreement". This leaves open the issue of what is the "application" or the "interpretation" of the Agreement. Referring back to the above example as to a capital expenditure, we question whether this would be an "application of the Agreement". We do not believe so.

Termination Agreement

Presently there is no formula available for consideration in relation to what will arise if the parties at some time in the future decide to divide the corporation and to establish separate power corporations. The suggestion has been made that this is something that could be negotiated at that time. We do not believe this is acceptable. Any model, which is eventually adopted, must incorporate a mutually acceptable pre-determined arrangement as to how the termination process would be implemented.

CONSIDERATION OF OTHER MODELS

The rationale for the proposed model is that it will maintain an economy of scale; will avoid unnecessary start up costs such as the establishment of a new administrative head office facility in the East and should avoid any immediate rate increase in both the Eastern and Western Regions. The presentations made to date by the NTPC suggest if there is a loss of economy of scale this will have an adverse affect on the ability of the Corporation to borrow money at favourable rates and a potential loss of large bulk purchasing power.

In each of the presentations made by the NTPC to the Office of the Interim Commissioner, no other model has been proposed. Materials obtained from NTPC confirm that the one corporation model was adopted by the Board of Directors of NTPC in December 1995. Only this model has been advanced by NTPC since.

We believe there are alternate models that may be better suited to represent the mutual and exclusive interests of both the West and the East. We submit that other models must be considered in order to determine the most appropriate arrangement. The Western Coalition, in its submissions to this Committee, proposed a variation to the current model with the establishment of two clearly defined profit centres. The two profit centres would both be divisions of the one corporate model. The Western Coalition believes it important profits be identified by place of origin and be tracked separately. The Coalition proposes there be two distinct classes of shares to reflect the two profit centres. At the end of the year, profits, if any, available for distribution as dividends, would then be paid out to the two Government shareholders through the different classes of shares.

While the Western Coalition model may preserve economies of scale, the model fails to address some fundamental concerns. It is simply a modified form of the proposed model. It would maintain disproportionate representation and control between the East and West while not allowing Nunavut to share in the overall profits of the corporation. There are other distinct disadvantages to the East as well. Such disadvantages would be the loss of potential job creation and the loss of potential new monies being added into the economy because of construction, and the requisite development of a new infrastructure to support the establishment of a separate power corporation.

If economies of scale and profitability are determined to be paramount an alternate model considered by the Office of the Interim Commissioner and discussed with the Minister is a two-corporation model. Under the two-corporation model each Government would have its own corporation. Each corporation could be structured according to the wishes of its respective territory. For example it could be a corporation under the provisions of the *Canada Business Corporations Act* or a corporation without share capital under Part II of the *Canada Corporations Act*. The two corporations would enter into an administrative arrangement, on a contractual basis, or through a joint venture, for administrative purposes, billing, purchasing, etc. A variation of this model would be to establish a third company that would in effect be an operating company to provide services on behalf of the two corporations.

We submit that a full review and examination of the proposed model and all other potential models continues to be required.

PROPOSAL OF THE OFFICE OF THE INTERIM COMMISSIONER

Based on the review process undertaken by the Office of the Interim Commissioner to date and taking into consideration the responsibilities of the Interim Commissioner as confirmed in the Letter of Direction of April 17, 1997, it is our opinion Bills 1 and 2 are premature. As outlined in the Ernst & Young report, it is evident there are a series of concerns identified and a number of matters that must be considered before a final

determination of the appropriate model should be made. Such concerns include population trends, environmental liabilities, industrial growth, etc. The report confirms that many of such concerns may affect the ultimate selection of the model used and all of such issues require a full and detailed analysis.

We therefore recommend the current Legislation be withdrawn and a moratorium period of one or two years be established during which an extensive independent analysis and audit should be undertaken. The purpose of this analysis and review process would be to marshal and develop sufficient knowledge and understanding to ensure the final decision will be the right decision. The analysis should be undertaken in an open manner and involve all of the stakeholders. In doing so it is believed the final decision will have a higher likelihood of long term success and be fair to both Governments.

In the interim, the Government of Nunavut will have been established. Thus, a decision of such import would be a decision of the two new Governments.

During the moratorium period the NTPC should continue to serve the requirements of both Territories. We see this being realized by the establishment of a joint Board of Directors responsible for overseeing the operations of NTPC.

How would this be achieved? This interim agreement could be implemented as follows:

1. The necessary steps will be taken to allow the Government of Nunavut and the Government of the Western Territory to hold in trust the undivided share of NTPC.
2. The current *NWT Power Corporation Act* will be amended to authorize the establishment of a joint Board of Directors between the two territories.
3. The amended Legislation would be duplicated effective April 1, 1999 by virtue of Section 29 of the *Nunavut Act*.
4. Prior to Division, the signatories would negotiate an Inter-Jurisdictional Agreement with the principal intent being to maintain the status quo. Unless unanimously agreed otherwise, there would be no significant capital expenditures, initiatives, or other steps taken by the Corporation out of the ordinary course of business. The Inter-Jurisdictional Agreement would provide that, if a final agreement to the satisfaction of both Governments is not achieved and if there is not the appropriate signing off on or before the fixed date, the Inter-Jurisdictional Agreement would terminate and division of NTPC would then occur. The termination process, if called upon, would be in accord with a Termination Agreement that would be negotiated concurrently with the Inter-Jurisdictional Agreement.
5. A mechanism for the joint regulation by the territorial Public Utilities Boards would be implemented. In principle, the approach proposed in Bill 2 would seem acceptable.

We recommend the term of the Inter-Jurisdictional Agreement not exceed two years.

CONCLUSION

In conclusion, for the reasons expressed to this Committee, we believe the process which has led to the tabling and consideration of Bills 1 and 2 is not in the best interest of all parties. Any decision about such a vital commodity as the supply of electricity must be made with all available information and with the involvement of each and every stakeholder if a viable long-term solution is to be achieved. We trust that the comments provided to the Committee today will assist the Committee in making its recommendations on the proposed legislation. The Office of the Interim Commissioner remains committed to working with the parties to identify and establish the optimum long-term solution.

Presentation to
The Standing Committee on
Government Operations

Presented by:
Iqaluit Chamber of Commerce
and
Baffin Regional Chamber of Commerce

April 1, 1998

Good morning Mr. Chairman and members of the committee. My name is Steven Roberts and I am the Vice-President of the Baffin Regional Chamber of Commerce and a director of the Iqaluit Chamber of Commerce.

The Iqaluit and Baffin chambers of commerce asked for this opportunity to address the standing committee, to present our views on the proposal to maintain the Northwest Territories Power Corporation as a single entity following division. Our position is based on common sense, and, I'm afraid, is not the product of endless research and analysis which we have neither the financial or human resources to undertake.

Over the past year much has been said about the advantages of one power corporation over two separate corporations. Both chambers fundamentally agree with the position that a single power corporation is the preferred option. However, this support is based on the principle that a single power corporation serving both Nunavut and the western territory must be equally owned and operated. And after hearing the presentations by NTI and the Office of the Interim Commissioner, it is clear others think so also. Anything less, means two power corporations should be created.

Because of this belief we cannot support the plan developed by NTPC which proposes a 60/40 split of shares. Nor can we place any merit in other proposals which have appeared in the media suggesting a 69/31 split. We feel these proposals are not supported by the facts and if implemented would ultimately lead to the establishment of two power corporations in any event.

We understand the proposal to keep one power corporation with a 60/40 share split is based on a division of equity and assets. The only "real" assets a power corporation has are its power stations. These power stations generate energy which is then sold to consumers. This "sale" results in revenue to the power corporation. We believe this revenue is the key to determining a fair and equitable ownership model.

We have reviewed NTPC's 1997-98 Operations Summary. In this document we find that 46% of total revenue comes from Nunavut and 54% from the west. The same document shows that Nunavut accounts for 44.5% of expenses and the west 55.5%.

In addition to this, it is clear to us that demand for power in Nunavut will grow faster than in the west. We believe this is supported by the 1996 census which showed a population increase of 16.4% in Nunavut between 1991-96 compared to an increase of 9% during the same period in the west. This coupled

with the establishment of a new government in Nunavut and the corresponding decrease of government resources in the west suggests to us, that NTPC's revenue will grow more rapidly in the east than west.

The same budget document also estimates 50.5% of net earnings will come from Nunavut and 49.5% from the west.

In a teleconference with NTPC officials last week we tried to get an explanation as to why net earnings were 50/50, (according to their own 1997/98 Operations Summary) but they were recommending a 60/40 split. Rigorous discussion took place but we were still not convinced. We concluded the meeting with a promise by NTPC to supply an explanation the following day.

The next day we were told that this budget did not include the latest General Rate Application increase. We are told this adjustment results in a decrease in net earnings from Nunavut of \$2,338,000 and an increase in net earnings from the west of \$5,835,000.

The net result we are told is a 63/37% split in net earnings rather than the 50/50 split contained in the Operations Summary. The revised split in net earnings is a result of the last General Rate Application.

The crucial point to us is, before the recent General Rate Application, it appears Nunavut customers were generating 50% of the Corporation's net earnings.

We are also told Head Office expenses are allocated based on a combination of salaries and wages in the east and the west and the number of customers. This split is 55% for the west and 45% for Nunavut. However while head office expenses are assigned to both Nunavut and the West, the economic benefits of the head office reside entirely in the West.

In our view these figures do not support the proposal for a 60/40 split of shares. But let's throw out the figures and talk common sense.

A power corporation owned by two governments 60/40 is doomed to failure. We cannot envision how the rights of the minority shareholder can be protected under this arrangement. This arrangement is unfair. What is required is ownership based on the principle of equality and shared risk. We believe this can only be accomplished with a 50/50 ownership of shares between the Government of Nunavut and the new western government. There must be an element of trust when we start out, or there is no point in continuing the journey.

Yesterday we listened to a proposal to keep the status quo under an interim management contract and to do further research and

analysis for the continuation of a single Power Corporation. But the fact remains we must establish a baseline at which we begin serious discussion.

We therefore propose the following:

1. After division ,the shares of the power corporation would be held equally by the two new government shareholders.
2. Each government would have an equal number of seats on the Board of Directors.
3. The new ownership arrangement would be continued on a year to year basis. Either shareholder would be able to sever the relationship with a year's notice. This is necessary if the deal is not working for either side. The decision to sever the relationship is a political decision for either legislature.
4. Because the corporation is owned by two public governments and not private shareholders, the proposal to establish two Public Utility Boards is a luxury we cannot afford. Not only do we recommend this proposal be abandoned, we also recommend that the existing PUB be phased out. We believe the two new governments can protect the interests of consumers. The savings to be realized are substantial, this means lower rates for the customer. Of course appropriate legislation would be necessary and would differ greatly from what NTPC is proposing.

5. Any proposal for a single Power Corporation must include jobs for Nunavut. If cost is a determining factor in delivering head office functions, why not put all the jobs in the Maritimes where the cost of living is lower. We better than anyone, know the cost of living is higher in Nunavut, but this cannot be used as an excuse to position jobs elsewhere. We propose any plan to share or divide the power corporation should include a plan to transfer entire head office functions such as purchasing and billing to Nunavut as soon as possible. This will spread the economic benefits of the head office equally between the two shareholders.

In closing we ask you to consider the merits of our argument. They are consistent with others you have heard this week. For without equal ownership of a single power corporation the only workable solution is to establish two separate power companies. This we believe, is not in the best interest of the West or Nunavut at this point in time.

Thank you.

Presentation to the Standing Committee on Government Operations Review of the Power Corporation Act

Mr. Chairman, my name is Levi Barnabas, and I appear before you today as the MLA for the High Arctic. I represent the communities of Arctic Bay, Grise Fiord and Resolute.

I asked for an opportunity to address the Committee today, because I wanted a chance to discuss my position and that of my constituency regarding the Power Corporation.

I understand and agree that the Power Corporation should remain as one entity. If it is split into two companies, power costs to the consumer will go up 5% in the West and an additional 7% in Nunavut. It would cost more to operate two smaller companies, as there would be reduced economies of scale. Both companies would have to pay proportionate costs for duplicate administration and overheads. Power costs are expensive enough already and further increases would be unacceptable.

I also understand that the proposed Unanimous Shareholders Agreement is the document that outlines the relationship between the two shareholders, the Government of the Western Territory and the Government of Nunavut.

The Agreement as I comprehend it would give the Western NWT 60% of the shares, and Nunavut 40%. It also proposes a 12 member Board of Directors. The two governments would appoint the Chair. Nunavut would appoint four directors, and the West, six. The Board would together appoint a President, who will also sit as a Member of the Board. However, I do not agree with these two aspects of the Agreement. Specifically, this would imply that Nunavut would constantly be in a minority position, which I consider to be unacceptable. The decision making process must be fair and reasonable, equitably reflecting interests of both East and West.

After detailed dialogue within Nunavut Caucus and with the Interim Commissioner, it is my opinion that a 50/50 equity split is the fairest. In addition, I also recommend that this equitable split be reflected in the

composition of the board, with five directors from the West and five from the East. Importantly, this opinion and recommendation reflects the position of most of my constituents and more specifically, myself.

During recent visits to my constituency, I undertook an informal survey regarding the proposed split. Almost all the people I talked to agreed that the split should be 50/50. Most everyone I talked to in my communities, including myself are under the impression that the East has been subsidizing the West for too long, and an equitable split is the only realistic solution. We feel strongly that anything less than a 50/50 split would be detrimental to the interests of the people in Nunavut. I understand this is also the opinion of many other stakeholders.

The future of the Power Corporation is equally significant to the people of both territories. We agreed to a single Power Corporation, but not to the proposed model under the current Unanimous Shareholders' Agreement. There must be at least a comfortable and an acceptable level of protection for minority shareholder interests. I vigorously encourage the Committee to recommend that the proposed Unanimous Shareholders' Agreement be revised to reflect an equitable 50/50 split. Most importantly, this Bill should not be passed until it is clear that Nunavut is being treated fairly.

Thank you, M. Chairman.

Appendix 2

NWT Power Corporation History and Mandate

A2.1 The Northwest Territories Power Corporation evolved from a request to the federal government by Giant Yellowknife Mines in the late 1940's for permission to construct a hydro plant on the Snare River. The federal government decided that, for the public good, the government should own the hydro plant so that the benefits of hydro-electric-power would be available to all residents of Yellowknife.

A2.2 In 1948 the federal government created the Northern Canada Power Commission to build and operate the Snare River power plant and to address the growing power needs of northern consumers. NCPC was first a branch of the federal Department of Mines and Resources, and then became a branch of the Department of Indian and Northern Affairs. The employees of the Power Commission were employees of the federal government and the head office was in Ottawa. As the NCPC was the responsibility of the Department of Indian and Northern Affairs, the Deputy Minister of the Department also served as Chairman and Chief Executive Officer.

A2.3 NCPC expanded as the NWT and Yukon developed. The Power Commission quickly developed an expertise in power generation and delivery and became the logical instrument to assume control of the various power plants that existed in the territories in the 1950's and 1960's. Construction began in the late 1950's on the Taltson River hydro generation station, which was to supply power to the new mine at Pine Point. In the late 1960's the Commission began taking over existing community power plants from, among others, the Hudson Bay Company, the Departments of National Defence, Transport Canada and Indian and Northern Affairs and the Government of the Northwest Territories.

A2.4 Public opinion in the north indicated that the NCPC was unresponsive, inefficient and did not understand the needs of its customers. The power

plants were located in the two territories but the decisions were made in Ottawa. It was felt that the customers had no say in the operation of the NCPC, much less control of or input to the decision making process. The NCPC was not regulated by any regulatory authority.

A2.5 In an effort to appease the calls for the head office of the NCPC to be located within the geographical area that it served, the federal government moved the head office to Edmonton in 1973. In 1975, the Government of Canada appointed the first full-time Chairman, Mr. Jim Smith, a former Commissioner of the Yukon. By 1986, the majority of Board Members were northerners, but the federal government still held financial control and the final decision making authority.

A2.6 The two territorial governments continued to lobby the federal government for ownership and control of the utility. During the late 1970's and early 1980's, the Standing Committee on Indian and Northern Affairs held two inquiries, the National Energy Board reviewed NCPC operations on two occasions, and the Public Utilities Boards in the Yukon and the Northwest Territories reviewed rate applications, although the NCPC was not subject to the legislative regimes of the two territories. In 1986, the Yukon government purchased the Yukon assets and in 1988 the GNWT purchased the outstanding shares of the NCPC.

A2.7 The Government of the Northwest Territories purchased the federal government's investment in the NCPC for \$53.0 million. The Acquisition Agreement provided that the utility was to be transferred as a going concern and that the Commission would be continued as the Northwest Territories Power Corporation.

A2.8 The purchase was financed in the capital markets. The money was borrowed by the new Corporation and guaranteed by the GNWT. The

NWT Power Corporation is repaying the \$53.0 million guaranteed by the GNWT. The GNWT incurred no expenses to purchase the Power Corporation other than those incurred during the negotiation process. In short, by purchasing the Northern Canada Power Commission, the GNWT owned and controlled a NWT based utility. The NWT Power Corporation was established as a Crown corporation, to operate in a business-like manner and to move towards a commercial rate of return for the GNWT.

A2.9 As a condition of the purchase agreement, the federal government required that all employees of NCPC be offered a position with the new NWTPC. As it turned out, the majority of the Edmonton staff decided to stay in the south and new staff had to be hired. This loss of corporate knowledge resulted in a very trying first couple of years at the Corporation's new head office in Hay River. A positive result of the move north was that the Corporation was able to reduce its Head Office PY's from 113 to 73.

A2.10 During the 12th Assembly of the Legislative Assembly of the Northwest Territories, Cabinet tabled a proposal to privatize the Power Corporation. The Standing Committee on Legislation held a televised public hearing on the privatization proposal in June of 1994 to provide northerners an opportunity to hear differing opinions on the privatization of the Power Corporation. The majority of presenters to the Committee felt that the NWT Power Corporation was operating as a viable business and providing a stable rate of return to the GNWT. This permitted the Government to subsidize power rates to the residents of the Northwest Territories based on the current Yellowknife rates.

A2.11 Concerns were also expressed to the Standing Committee that the privatization proposal was unfair to the future Government of Nunavut, as it allowed no input on behalf of the future government. northerners did not support the privatization of the Power Corporation and Cabinet withdrew the proposal.

Appendix 3

NWT Public Utilities Board History and Mandate

A3.1 The **NWT Public Utilities Board** regulates the operation of certain public utilities in the Northwest Territories. Public utilities generally include bodies that provide a service that is vital or essential for society's well being. Examples of the services typically provided by public utilities are electricity, telephone and natural gas.

A3.2 Most public utilities are capital intensive due to the high cost of the infrastructure required to provide the service. A result of the required capital investment is that most public utilities are monopolies, that is, the only supplier of a service within a geographical area. The public utility is usually granted this monopoly by the relevant regulatory agency so that the utility can provide service at a reasonable cost by spreading its high capital costs among all customers in the area served.

A3.3 The need to regulate a public utility arises because an essential public service is being provided by a monopoly enterprise. If the monopoly is not regulated, it can charge rates that exceed its cost in providing the service. The consumer is obliged to pay the high costs in order to receive the essential service. Regulation prevents price gouging by the monopoly.

A3.4 In the NWT, the mandate of the Public Utilities Board is to ensure that energy consumers receive reliable service at reasonable rates while also ensuring that the utility is provided with an opportunity to earn a fair rate of return on its investment.

A3.5 The duties and responsibilities of the Board are set out in the *Public Utilities Act*. At present the NWT Public Utilities Board fully regulates the Northwest Territories Power Corporation, Centra Power Inc. and Northland Utilities. The Board also partially regulates Stittco

Utilities, a propane supplier in Hay River.

A3.6 The Board regulates these utilities by way of applications or review of rate schedules. If a utility wishes to change its rates or change the terms and conditions under which it provides its service, it must make a written application to the Board. The Board holds public hearings on applications to permit the utility to present more information to the Board in support of its application and to allow interested parties or individuals affected by the application to present evidence to the Board on why an application should be denied or altered.

A3.7 The Board's principal areas of concern in regulating utilities includes the fixing of just and reasonable rates, approving franchise agreements, approving the incurrence of long-term debt, approving the terms and conditions of service and issuing permits for major capital projects. The Board also examines utilities' books and forecasted revenues and expenditures to ensure that an application or project is justifiable.

A3.8 The NWT Public Utilities Board began regulating the NWT Power Corporation shortly after the sale of the Northern Canada Power Commission to the Government of the NWT in October of 1989. At this time, the Board was given the jurisdiction to determine the Power Corporation revenue requirements and to approve the Power Corporation's terms and conditions of service. The rates charged by the NWT Power Corporation to its customers were set by the Legislative Assembly and prescribed in the regulations of the *Northwest Territories Power Corporation Act*.

A3.9 In April 1990, at the request of the Executive Council, the Board undertook a review of the electrical rate structure in the NWT. As part of the report provided to Cabinet in October 1990, the Board recommended that the responsibility for setting and approving the Power Corporation rates be given to the Public Utilities Board. The necessary amendments were made to the *Northwest Territories Power Corporation Act* in 1991 and the Board took on full regulation of the NWT Power Corporation effective April 1st, 1992.