



206, 5102 - 50th Avenue, Yellowknife, NT X1A 3S8 Phone: (867) 669-3390 Fax: (867) 669-3395

Mackenzie Valley Environmental Impact Review Board  
200 Scotia Centre  
Box 938, 5102-50th Ave  
Yellowknife, NT X1A 2N7

February 22, 2010

**RE: Taltson Hydroelectric Expansion Project  
Environmental Assessment  
Closing Remarks of Dezé Energy Corporation (Dezé)**

Please find attached Dezé's closing remarks for this Proceeding.

We note that the Board has been served with a Request for Ruling by Parks Canada (the "Request") dated February 18, 2010. In the Request, Parks Canada has asked that the Public Registry remain open so that, amongst other things, Parties can make further comments on the Reliance routing adjustment.

In the event the Board grants the relief set out in the Request, Dezé would reserve the opportunity to add to these closing remarks as may be necessary or appropriate, to address comments and submissions of Parties.

Kindly contact the undersigned if you have any questions.

Regards,

A handwritten signature in black ink, appearing to read "Dan Grabke".

Dan Grabke,  
Managing Director  
Dezé Energy Corporation

**CLOSING SUBMISSIONS  
TO THE  
MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD**

**ENVIRONMENTAL ASSESSMENT**

**TALTSON HYDROELECTRIC EXPANSION PROJECT**

**DEZÉ ENERGY CORPORATION**

**FEBRUARY 22, 2010**

## **I. INTRODUCTION**

Dezé is grateful for the opportunity to provide the Mackenzie Valley Environmental Impact Review Board (the “Board”) with its closing submissions.

This filing is Dezé’s response to submissions of interested Parties filed on the proceeding’s Public Registry since the close of the public hearing on January 15, 2010 through to February 19, 2010.

Capitalized terms used in these submissions, and not otherwise defined below, have the meanings given to them in the Developer’s Assessment Report dated March 2, 2009 (the “DAR”) and in subsequent amendments to the DAR filed by Dezé.

Dezé’s closing remarks are organized into the following categories:

- East Arm / Lockhart Crossing
- Lustel K’e Dene First Nation
- Fisheries Resources Habitat
- Wildlife
- Nonacho Lake Lodge
- Other Matters:
  - Procedural Fairness
  - Cumulative Effects
  - Significance of Public Concern
  - Proposed National Park
  - Existing Commercial Activity
- Conclusions
- Appendices

## **II. EAST ARM / LOCKHART CROSSING**

### ***Overview***

At the public hearings, Dezé committed to file further information for the benefit of the Board and Parties concerning transmission line routing adjustments over the East Arm region. The following information has been filed in response to this commitment:

- a supplemental submission filed on January 26, 2010 identifying potential routing adjustments that would respect LKDFN concerns and avoid a crossing of the Lockhart River and disturbance to the Desnedhe Che area;
- studies and analyses supporting the information filed in Section 4.3 of the DAR concerning Transmission Line Routing and the selection of a preferred route; this information was filed on January 27, 2010; and
- a submission dated February 11, 2010 to respond to specific questions from the Board concerning the “Reliance Adjustment”.

As noted in our closing submissions at the hearing, the East Arm route is the only viable option for the Project (i.e., the only option that would be considered suitably reliable and profitable by the banks that would finance the Project). If the East Arm route is not accepted, the Project cannot go ahead.

We also noted that the “No-Go Zone” of Desnedhe Che (identified and defined by the LKDFN during the public hearings as the area of the Lockhart River between Artillery Lake and Great Slave Lake) reduced the options for constructing and operating the “East Arm” section of the transmission line between Nonacho Lake to Gahcho Kue. In response to this critical piece of information, Dezé was able to identify two potential adjustments in our January 26<sup>th</sup> submission to avoid Desnedhe Che: the Artillery Lake Adjustment and the Reliance Adjustment.

We also confirmed the following in this filing:

- due to concerns raised in discussions with LKDFN that Artillery Lake is also of significant cultural and spiritual importance;
- the effects (impact) assessment in the DAR is largely applicable to the Reliance Adjustment route; and
- specific information would be gathered to develop mitigation measures.

Our second supplemental routing filing (February 11<sup>th</sup>) expands upon the Reliance Adjustment analysis, to detail issues and considerations associated with aerial and underwater options for crossing from Maufelly Point to Fairchild Point, or, alternatively, near Old Fort Reliance.

As noted in the second filing, Dezé will evaluate aerial or underwater cable from Maufelly Point to Fairchild Point or a crossing near Old Fort Reliance, and work with affected residents in the area to mitigate aesthetic impacts.

In summary, there are no outstanding environmental concerns that, after mitigation, would impede the Project crossing the Lockhart River at any point between Artillery Lake and Maufelly Point, although surveys and studies will be required to confirm the most suitable mitigation for the crossing point selected. The remaining issues are cultural, spiritual and aesthetic.

Going forward we would be prepared to establish a routing committee comprised of representatives from all Parties who have expressed an interest in the specific crossing option to be chosen, to determine which of the options presented can be implemented and the mitigative measures necessary to reduce or eliminate adverse impacts.

### ***Basis for Routing Adjustment***

Several Parties have commented in their submissions that Dezé has “sprung” the Reliance Adjustment on the Parties and the Board at “the last minute”, to catch them off guard and “slip” this routing through, an action labeled “procedurally unfair”.

With respect, these conclusions are incorrect and misplaced.

The Board knows full well that the commitment to investigate transmission line adjustments by Dezé arose in direct response to submissions by LKDFN at the time of the public hearings in mid January of this year, and that the proposed Lockhart River crossing in Desnedhe Che, which was Dezé's proposed route over the East Arm, was a "No-Go Zone" of spiritual and cultural significance.

Regrettably, and despite repeated attempts since February 2008, Dezé has been unable to engage in any meaningful dialogue and consultation with the LKDFN on crossing the East Arm area, prior to the public hearings in January 2010, when LKDFN identified the spatial area of Desnedhe Che as a spiritually and culturally significant area. However, as will be noted below, the proposed routing adjustments are an example of the regulatory process working as the Board intends it to.

### ***Response to Issues***

Dezé has reviewed the submissions of others commenting on the transmission line adjustments and wishes to respond to issues raised by certain Parties.

We ask that the Board consider these matters in light of the following: rather than creating an impediment to the process, Dezé's provision of crossing options to avoid the Desnedhe Che area are examples of the environmental assessment process working as intended. According to the Board's Guidelines for *Environmental Impact Assessment Guidelines, 2004*, "Through EIA, it is possible to anticipate and avoid environmental problems, rather than reacting and fixing them after they occur. The EIA process contributes to good decisions about the conservation, development and use of land and water resources for the optimum benefit of the residents of the settlement areas, the Mackenzie Valley and Canada." Changes to the Project during the early design phase and which were discussed during the public hearing, and the Reliance Alignment proposed following the public hearing, are examples of such.

#### **1. Aesthetic Impacts**

Concerns regarding aesthetic impacts of the routing adjustment were raised by many Parties. Dezé understands that aesthetic impacts are a primary concern raised by these

Parties, for any alignment passing through the East Arm area. Indeed, this was the focus of a Subject of Note in the Board's Terms of Reference (Subject of Note Effects to Tourism Potential and Wilderness Character), and addressed by Dezé in the DAR.

Dezé is sensitive to and acknowledges these concerns. That is why in our supplemental filings on routing adjustments, we have indicated willingness and a commitment to adopt design measures to address these concerns. The use of low profile towers, and if necessary, underwater marine crossings will be considered for both crossing options. Also, local routing committees could be used to assist with pole configurations and tower locations.

Indeed, some Parties (Dunn) support an underwater option. Parks Canada has noted in its submission that "... (c)onstructed appropriately, underwater routes and / or directional drilling for the transmission lines could reduce the impacts to visual experience and wilderness experience of the area."

The use of underwater crossings will come at considerable expense to Dezé; however we are committed to work with stakeholders to address concerns related to aesthetic impacts.

## **2. Crossing Near Old Fort Reliance**

This crossing alignment has been addressed by Ms. Kolson and Mr. Morris. Dezé understands from Page 13 of Ms. Kolson's submissions that she is not opposed to the Project, but rather she is opposed to a crossing at or near Old Fort Reliance, due mainly to aesthetic concerns. Similarly, Mr. Morris does not indicate an objection to the Project in his submission, but rather provides a suggestion as to a specific alternative location. Should the affected Parties be receptive to a crossing at or near Old Fort Reliance, we work will with them to explore this option.

## **3. Noise from Power Lines**

Several Parties (Kolson, Dunn, DeCorby and Olesen) referred to impacts from buzzing or crackling noises which may be present from transmission lines. As noted in Dezé's supplemental filing on January 27, and referenced in the DAR, this transmission design

is not anticipated to create noise audible from the ground, due to the relatively low electrical loading of the conductor line. Noise occurs during periods of line failure or operational problems, and is therefore usually eliminated upon repair and in a short time after occurrence. Impacts from wind noise through the transmission line were addressed through the technical sessions (see Dezé's submission of November 2, 2009).

#### **4. Migratory Bird and Species at Risk Issues**

It has been brought to Dezé's attention by several sources, including EC and by legal counsel to Finlayson, DeCorby and Decorby (all submitted on February 18, 2010), that the East Arm of Great Slave Lake is used as a staging area for migratory waterfowl, particularly at Maufelly Point which becomes clear of ice early in the spring, and that these birds may be at risk of colliding with an aerial transmission line in this area, an issue discussed in Section 15.4.8 of the DAR.

Dezé is willing to investigate and address potential impacts to migratory birds in this area. Similarly, while a change to the site of the Lockhart crossing will not change the species at risk already discussed in the DAR (Section 15.4.1 and 15.4.), Dezé is willing to review the DAR's conclusions regarding species at risk in the Desnedhe Che or Kache areas.

#### **5. Aviation Issues**

Parties (Shergold and DeCorby) have indicated an overhead transmission line traversing the Maufelly Point to Fairchild Point crossing will adversely impact aircraft navigation. Dezé believes this concern can be directly addressed and mitigated by way of low profile towers together with an underwater marine crossing. Further, the Expansion Project will adhere to all applicable legislation, including the *Canadian Aviation Regulations*, enforced by Transport Canada.

None of the foregoing will however preclude Dezé from working closely with the Parties throughout the detailed design process to ensure their interests are taken into fullest consideration.

## **6. Impacts on Business of Trophy Lodge**

Dezé is prepared to meet with the owners of the Trophy Lake Lodge to find reasonable and fair ways to address concerns about the impact of the Project upon the Trophy Lodge business.

As noted above, we understand the fundamental and primary concern of Mr. Finlayson is with the wilderness and aesthetic impact of an overhead transmission line crossing from Maufelly Point to Fairchild Point. We will work to address these concerns, including through the use of low profile towers and underwater marine crossings.

Dezé notes that there are no statutory or legislative guidelines or provisions which prevent the land use proposed by Dézé for the crossing. Accordingly, Dézé respectfully submits that the Board should be cautious and avoid issuing any conditions or recommendations on approving the Project which would result, in form or substance, in placing any restrictions on the land use proposed by Dézé that are not within the Board's jurisdiction to do so.

## **7. Consultation on Reliance Adjustment**

Several Parties, including Parks Canada and DFO, have expressed concern over the degree of public consultation undertaken by Dézé in respect of the Reliance Adjustment.

The Board's public Registry indicates that both the Board and Dézé have made reasonable efforts to contact all known Parties who have land or other interests in the areas identified for the routing adjustment.

Dezé notes that 14 submissions<sup>1</sup> have been filed by Parties who had not previously participated in the proceedings. While Dézé has not consulted with all of the Parties making the submissions, it is submitted that Dézé has initiated contact with individuals or concerns who are directly affected by the proposed adjustment.

---

<sup>1</sup> Based on submissions posted to Public Registry as of February 22, 2010.

In considering consultation in a general context, Dezé submits the Board should note and take into account that the factors for consideration by the Board in conducting environmental assessments, as set out Section 117 of the *Mackenzie Valley Resource Management Act* (the “MVRMA”), do not expressly cite developer consultation.

Further, the Board’s own *Environmental Impact Assessment Guidelines, 2004* (see section 2.2) state that a developer must provide the following in its consultations:

- notice of the matter in sufficient form and detail to allow the Party to prepare its views on the matter;
- a reasonable period for the Party to prepare those views; and
- an opportunity to present those views to the Party having the power or duty to engage the community.

These requirements mirror the statutory requirements set out in Section 3 of the MVRMA. As a Project with true local and northern ownership, we have consistently and fully engaged in meeting and consulting with stakeholders whenever and wherever possible, because these persons and businesses are our neighbours.

In the case of the Reliance Adjustment, notice of the Reliance Adjustment was provided by the Board by way of newspaper advertising published on February 5, 2010 and direct contact by Board staff prior to this date. As noted above, Dezé initiated contact with individuals or concerns who it believes are directly affected by the proposed routing adjustment. The Board has provided the Parties with opportunity to present their views to the Public Registry, and Dezé understands all such persons have done so.

Going forward, our commitments table filed on January 29, 2010, and our submission on the Reliance Adjustment, detail many examples of how and where we will continue to work with stakeholders to address their concerns.

## **8. Scope of Development**

Several federal regulators (EC, DFO, and INAC) and LKDFN have indicated that the scope of development for the Project may require clarification in light of the submissions filed by Dezé concerning the Reliance Adjustment.

As noted above, this adjustment is provided as further information as to viable options for crossing for the East Arm, and in particular the waters of the Lockhart River system. This adjustment is also an example of the right of the developer to make adjustments to its routing, without altering the basic features of the proposed route, in response to information that becomes available during its environmental assessment process.

It is important for the Board to understand that these routing adjustments still relate to a crossing of the Lockhart River waters, albeit at a location at the mouth of the river (Old Fort Reliance) or where the waters pass through to the East Arm of Great Slave Lake (at Fairchild Point).

While the adjustments raise design issues relative to the use of underwater crossings, the adjustments do not alter the fundamental characteristic of the east route, namely that the route features a crossing of the Lockhart River waters.

The Reliance Adjustment is a mitigative measure or 'alternative means' as specifically contemplated by s.117 of the MVRMA, and fully falls within the Board's guiding principles for the intended results and outcomes arising from the environmental assessment process.

The Board is tasked with carrying out the Environmental Assessment process to determine if the proposed development will result in a significant adverse environmental impact, and if such impacts can be avoided or mitigated. Under Sections 117 (2) and (3) of the MVRMA, an environmental impact assessment must consider:

(2) Every environmental assessment and environmental impact review of a proposal for a development shall include a consideration of

(a) the impact of the development on the environment, including the impact of malfunctions or accidents that may occur in connection with the development and

any cumulative impact that is likely to result from the development in combination with other developments;

(b) the significance of any such impact;

(c) any comments submitted by members of the public in accordance with the regulations or the rules of practice and procedure of the Review Board;

(d) where the development is likely to have a significant adverse impact on the environment, the need for mitigative or remedial measures; and

(e) any other matter, such as the need for the development and any available alternatives to it, that the Review Board or any responsible minister, after consulting the Review Board, determines to be relevant.

Additional factors

(3) An environmental impact review of a proposal for a development shall also include a consideration of

(a) the purpose of the development;

(b) alternative means, if any, of carrying out the development that are technically and economically feasible, and the impact on the environment of such alternative means;

(c) the need for any follow-up program and the requirements of such a program; and

(d) the capacity of any renewable resources that are likely to be significantly affected by the development to meet existing and future needs. [emphasis added]

The emphasized portions noted above require the Board to consider alternative means from those proposed in carrying out the development, in respect of both mitigative and alternative measures. In the case of a crossing of the Lockhart River, the Reliance Adjustment proposed by Dezé meets both of these criterion, as it is both an alternative and mitigative measure to deal with the concerns raised by LKDFN regarding Artillery Lake and the “No-Go Zone”.

Moreover, under the “General Principles of the Assessment Process” in Section 3.4 of the Board’s *Environmental Impact Assessment Guidelines, 2004*, the Board notes that:

If the development is allowed to proceed, the environmental assessment may recommend mitigation measures (in addition to those proposed by the developer). These are changes to the design and management of a development to avoid or reduce environmental impacts.

Dezé submits the Reliance Adjustment is an example of "... changes to the design and management of a development to avoid or reduce environmental impacts". The change also stands as an example of other principles, namely that "... the best decisions possible are made about proposed developments ..." and "(a)n environmental assessment includes a carefully designed fair process to anticipate and avoid impacts rather than reacting to them after they have occurred.

### III. LUTSEL K'E DENE FIRST NATION

The LKDFN filed a response dated February 11, 2010 which included comments on a number of areas and issues. Some of the concerns raised by LKDFN, including scope of assessment/development, cumulative effects, procedural fairness and significance of public concern, are addressed elsewhere in these remarks.

Of particular note to Dezé for comment is that the LKDFN have indicated that a crossing through the "Kache" or Reliance region, and indeed the spatial area of Desnedhe Che, raises specific concerns in the areas of Treaty and aboriginal rights and interim land withdrawals.

With respect to Treaty and aboriginal rights, Dezé considers this to be a matter tied to the responsible authorities carrying out their duties to consult affected aboriginal parties. We note that the INAC presentation made at the public hearing confirmed the following concerning aboriginal consultation:

- INAC views consultation that occurs during the Environmental Assessment process as procedural aspects of Crown consultation.
- Consultation undertaken by MVEIRB can form part of, and be taken into account for, the purposes of Crown consultation.
- INAC, as part of the Crown, is committed to ensuring that the duty to consult, and where appropriate, accommodate, is met.
- INAC and the other Responsible Ministers will review information provided during the EA process and the Report of EA to determine whether additional consultation is required by the Responsible Ministers prior to making their decision regarding the MVEIRB's recommendation contained in the Report of EA.

With respect to interim land withdrawals, Dezé assumes that LKDFN is referring to Order in Council 2000-1659, referenced in INAC's letter dated January 12, 2010. As noted by INAC in its letter, this Order in Council allows an exception for transmission lines.

Notwithstanding these matters, Dezé hopes to work with the LKDFN going forward to identify a viable crossing of the East Arm which will respect cultural and spiritual needs and minimize other potential adverse impacts.

#### **IV. FISHERIES RESOURCES**

Throughout the environmental assessment process and during the oral hearings, the Board received considerable documentation of meetings and correspondence in regard to the protection of fisheries resources. Dezé has worked extensively with DFO, which is reflected in the DFO's Undertaking submission to the Board dated January 29, 2010. The Undertaking submission confirms that all remaining fisheries or aquatic recommendations presented by the DFO at the hearing can be adequately addressed during a further regulatory phase by Authorization under the federal *Fisheries Act*. For those items that are not regulated under the *Fisheries Act*, including aboriginal group liaison, DFO identifies that the Water License or Land Use Permit processes would regulate those items.

Dezé continues to work with the DFO to ensure protection of fisheries resources and on February 04<sup>th</sup>, 2010, Dezé spoke with DFO in regard to the recent transmission line adjustment and potential fisheries resource interests and mitigation. As presented in DFO's February 18, 2010 letter to the Board, impacts to fish and fish habitat should be avoided through the use of the same mitigation presented in the DAR for the preferred transmission line route and the compliance with the DFO Operational Statement for Underwater Cables.

## V. WILDLIFE

During the hearings, the Board heard discussions regarding the impacts of the Project on wildlife. One concern raised by many was the possibility of increased hunting from the new winter roads from Fort Smith to Nonacho Lake. Dezé outlined some natural factors and proposed mitigation that may limit the accessibility of this road to hunting, reiterated here. Also provided was a summary of the proposed measures to limit impacts to caribou from the construction and operation of the Project.

The natural factors that will limit access to caribou include the irregularity of caribou movements, and the limited amount of old forest in the Taltson watershed following forest fires. Traditional knowledge and scientific studies tell us that caribou prefer old forests in the winter, and avoid burnt areas. As outlined in the DAR, the current southern extent of the Bathurst caribou range ends near the southern end of Taltson Lake, likely as a result of forest fires in recent decades. Further, caribou presence is irregular and unpredictable at the outer extents of their range. Since 2002, there has only been one winter when collared Bathurst caribou traveled south of the Snowdrift River. Hunting caribou from the proposed temporary winter road would thus require a long drive (over 180 km), with limited chance of success.

Dezé has also proposed a number of controls to further limit access on the winter road to Nonacho Lake for hunting. This will include fences and locked gates on private property at Twin Gorges that will impede unauthorized vehicle traffic to the caribou winter range. The road will be patrolled by Dezé's environmental monitors who will record all instances of unauthorized use, and may report back to Dezé and ENR with access management options if problems arise. Patrols by GNWT Renewable Resource Officers may also occur. Should observed unauthorized access be a concern, Dezé could establish staffed checkpoints along the winter road. Further, ENR has indicated that additional controls could be implemented with government authority, including the establishment of a no-hunting corridor along the winter road (similar to that along the Ingraham Trail). Following the three year construction period, the winter roads will no longer be maintained, and blocking of the portages with slash and rocks is proposed to reduce future access by snow machine.

Dezé has also proposed several strategies to reduce impacts to caribou during construction and operation. Bathurst caribou are currently exposed to the Snare Hydro transmission line, similar in structure and size to that proposed for Taltson. As the Taltson transmission line will extend to the tundra and the sensitive caribou summer and fall range, Dézé has proposed monitoring, involving the community of Lutsel K'e, to address uncertainty about how caribou will react to the transmission line. The Project construction schedule considers impacts to wildlife, and caribou in particular. As the Project proceeds, efforts will continue to schedule construction to avoid conflicts with sensitive wildlife areas and movements. For example, vegetation clearing will not occur during the migratory bird nesting season, and construction activities will not coincide within the caribou summer and fall movements. Finally, environmental monitors can report observations of caribou and suggest avoidance options to construction crews.

A range of other wildlife concerns have been raised by Dézé and the Parties, and Dézé remains committed to finding solutions to mitigate impacts. The submission of the Draft Environmental Monitoring Program is an important step in this process, and Dézé intends to further refine this Program during the regulatory process. Further, Dézé remains committed to hiring local environmental monitors who understand this region and our wildlife. These monitors will be responsible for conducting the environmental monitoring, to suggesting improvements, and to reporting back to Dézé and the Parties.

## **VI. NONACHO LAKE LODGE**

### ***Overview***

Dezé has reviewed the submissions of the Carter family, owners of the Nonacho Lodge, filed on January 29, 2010. These submissions contain several sections and issues which Dézé wishes to address.

### ***Response to Issues***

#### **1. Impacts on Business**

Dezé understands that the Carter family has requested that the Board require, as a condition of its approval, that Dézé "... work with the Carters to adequately address their concerns as a condition of the Project moving forward."

Dezé intends to continue working with the Carters to resolve issues. During questions from the Board at the public hearing, Dézé indicated it had begun detailed discussions with the Carter family on the impacts the Project will have on their operations. For example, Dézé has offered to hire a camp manager to maintain and ensure the security of the Nonacho Lake Lodge during construction.

Dezé commits to advancing discussions with the Carters to find reasonable and fair ways to address these matters. As noted above with respect to the Trophy Lake Lodge, there are no statutory or legislative guidelines or provisions which prevent the land use proposed by Dézé such that the Board should avoid issuing any conditions or recommendations which would result in placing any restrictions on the land use proposed by Dézé that are not within the Board's jurisdiction to do so.

#### **2. Environmental Impacts**

The submissions of the Carter family with respect to environmental impacts make reference to the DFO submissions in the areas of water levels, mercury levels and toxins, and species endangerment in respect of aquatic life.

Regarding water levels, Dezé does not agree with the Carters that the Board recommend that the Project be subject to Environmental Impact Review for the purpose of further studies. These issues have been addressed in previous licensing proceedings for the existing Town Gorges facility. As set out below in Section IV, these issues will be addressed again in the regulatory process if not already addressed through Dezé's corporate commitments, and there are several years before the Project becomes operational when further baseline studies may be conducted. In the particular case of lake trout spawning in Nonacho Lake, DFO and Dezé have identified that lake trout spawning depths can be clarified with further baseline studies during the regulatory process, and predicted impacts monitored through an Aquatic Effects Monitoring Program.

With respect to mercury levels and toxins in the water, the Carters suggest that the recommendations of DFO for further studies on mercury levels and toxins be adopted. With respect, neither DFO nor the Carter family have contested Dezé's methods or predictions with respect to mercury presented in the DAR, only that more certainty would be preferable.

Dezé has filed information in this proceeding with respect to mercury levels in water based on previous studies<sup>2</sup>. These studies show that current fish tissue mercury levels of Nonacho are similar to those of nearby undisturbed lakes. The DAR presents conservative predictions of the change in fish tissue mercury levels if the Project were to go ahead. The modeling work shows that the change in mercury levels are negligible.

Accordingly, Dezé submits that the Project does not require a submission to Environmental Impact Review as requested by the Carters in respect of fish and fish habitat matters, as there has been no finding of significance.

---

<sup>2</sup> DAR Section 13.5 Bioaccumulation of Mercury; Rescan. 2003. Taltson Hydro Project 2003 Water Effects Monitoring Program. Prepared for Northwest Territories Power Corporation by Rescan Environmental Services Ltd.; Rescan. 2004. Taltson Hydro Project 2004 Water Effects Monitoring Program. Prepared for Northwest Territories Power Corporation by Rescan Environmental Services Ltd.

With respect to species endangerment and wildlife matters, again the Carter family submits that the Board recommend the Project be subject to Environmental Impact Review. As above, Dezé does not believe this is necessary.

Further, in regard to fish and aquatic resources, DFO has established, as set out in Section IV, that during the regulatory process additional specific baseline data can be established to support an Aquatic Effects Monitoring Program.

Therefore, it is not reasonable for the Board to order an Environmental Impact Review on the basis of additional baseline data, firstly because there has been no finding of significance with respect to these matters, and secondly the Board has the ability in its recommendations to address the requirements for additional baseline data.

Lastly, neither DFO nor EC have requested a review, whether due to significance of public concern or adverse impacts upon the environment.

### **3. History of Consultations**

On page 7 of its submissions, the Carter family alleges that “The proponent ... neglected to advise the Carters of their plans for Nonacho Lake until September 23, 2009”. Dezé disagrees with these allegations. Attached to these submissions is a reproduction of an email dated July 12, 2007 (*Appendix I*) from a Dezé representative to Mr. Grabke referencing a meeting summary between Dezé and Dean Carter held on Tuesday, July 10, 2007. The email indicates that discussions were in fact held with Mr. Carter with respect to matters concerning the Project and Nonacho Lake. Dezé also confirms that other discussions were held with the Carters towards the end of 2008 regarding the purchase of their lodge business.

While Dezé recognizes the interest the Carters have in the Project, and its impacts upon their business, Dezé takes exception to the characterization of counsel in submissions (Page 7) with respect to the “Proponent” making misstatements of facts, and rejects any suggestion or assertion that the Proponent is of “faulty credibility and questionable commitment to follow through with promises and actions”. Quite clearly, Dezé has been in dialogue with the Carter family from time to time with respect to the Project, including

as far back as July, 2007, and indeed its contractors and representatives have used the accommodations at Nonacho Lake Lodge back to 2003 for conducting baseline studies.

In Dezé's respectful submission, the Board would do well to separate the impact of the Project on the Carter family business, and what appears to be the clear intention of the Carter family to sell their business, which intentions are noted in both the Dezé internal correspondence attached hereto, and indeed in counsel's submissions. While Dezé has been and remains willing to deal with impacts of the Project on stakeholders, it does not believe that the scope of that impact includes dealing with business interests of any particular stakeholder that are collateral to the environmental assessment of the Project. Dezé submits the stated desire of the family to sell the business is such a collateral business interest.

## **VII. OTHER ISSUES**

### ***Overview***

Dezé has noted Parties have raised other matters in their submissions which merit a response. While some of these issues do not relate to specific undertakings or directly to the Reliance Adjustment, and therefore are would not normally be proper for the Board to consider at this stage, we believe the Board would benefit from our comments.

### ***Response to Issues***

#### **1. Procedural Fairness**

Dezé understands that several Parties have argued that the Board has not provided procedural fairness in dealing with the Reliance Adjustment.

Dezé agrees that that the Board is subject to the rules of natural justice and procedural fairness. In the Board's own words in Section 3.2 of Guidelines: "This means that ... Review Board processes provide fair opportunities for participants to prepare and state their positions."

In Dezé's view, the Board has provided these opportunities to Parties, through the public notice of the Reliance adjustment filing by Dezé, through newspaper advertisements published on February 5, 2010, and by extending the closing of the Public Registry to allow Parties to make comments.

The Board also asked Dezé to respond to specific questions concerning the Reliance routing, and we provided this information in our February 11<sup>th</sup> submission.

The Board has the duty to establish its own rules and the discretion to vary them; Section 30 (1) (a) of the MVRMA and Section 8 of the Board's Rules<sup>3</sup>, respectively. In the case of the process for comments on the Reliance Adjustment, Dezé submits the discretion of the Board has been exercised reasonably and fairly.

---

<sup>3</sup> Rules of Procedure for Environmental Assessment and Environmental Impact Review Proceedings, Revised May 1, 2005 (the "Rules").

Further, the Board should specifically note that no Party requested, immediately or near following the filing of the January 26<sup>th</sup> adjustment submission by Dezé, more time to provide comments and/or review materials. Instead, Parties waited for three weeks to raise the issue.

While Dezé recognizes the right of Parties to provide comments on process and procedure as they may see fit within the Board's guidelines and directions, it is respectfully submitted that the Board should give the proper weight to claims of urgency and prejudice by Parties not raising the issue earlier, particularly those who have been active in the process throughout and who attended the oral hearings.

## **2. Cumulative Effects**

Cumulative effects were assessed in considerable detail in the DAR, and we believe set a standard by which future Developer's Assessment Reports will be judged. Cumulative effects are discussed in each Key Line of Inquiry and Subject of Note; the main findings and reasonably foreseeable future projects that may affect the DAR conclusions are discussed in Chapter 19 of the DAR.

During the technical sessions, none of Dezé's conclusions regarding cumulative effects were challenged. To clarify concerns raised since the technical sessions, it should be noted that all power supplied by the Taltson Project will be used by the existing diamond mines and the proposed Gahcho Kue Project; there will not be surplus to sell to other clients at least until such time as one of the existing diamond mines is closed. The cumulative effects caused by the Project should also be weighed against the environmental benefits; namely a significant reduction to greenhouse gas emissions and approximately 2000 fewer annual haul trucks on the Tibbitt to Contwoyto Winter Road.

## **3. Significance of Public Concern**

To complete its mandate under the MVRMA in respect of an environmental assessment, the Board must make a determination of whether the Project is likely to be a cause of significant public concern; Section 128 (1) (c) of the MVRMA.

Several Parties (including the LKDFN) have asserted that the participation in this Proceeding demonstrates significant public concern.

Dezé's response is framed by the Board's discussion paper dated November 2009 entitled "*A Framework for Determining Whether a Proposed Development Is Likely To Be Cause of Significant Public Concern*" (the "Framework Paper").

In the Framework Paper, the Board rightly notes on page 2 that the test for significant public concern is more stringent at the environmental assessment level than at the preliminary screening level.

Adopting the guidance from case law on deciding the significance of public concern, as set out by the Board on pages 7 through 9 of the Framework Paper, Dézé offers the following general observations:

- while Parties who live or operate businesses in specific locations, such as Lutsel K'e, Fort Reliance, Reliance and Nonacho Lake, have expressed concern on specific impacts of the Project as it relates to them, there has not been any significant expression of general concern with the Project from the general public in the Northwest Territories or across Canada;
- there is no consistent response from Aboriginal organizations in the areas connected with the Project, being both the North and South Slave regions; indeed, some organizations strongly support the Project and some do not support specific components of the Project, namely the transmission line routing as presented; and
- federal and territorial agencies have not raised any objections to the Project, and believe that the Project may be approved with appropriate recommendations.

Dezé notes that in the Framework Paper the Board provided two recent examples of Projects in which it has developed further criteria to assess the significance of public concern: the Mackenzie Gas Project ("MGP") and the Gahcho Kue Project ("GKP").

The MGP, while larger in geographic scope overall versus the Project, is a useful analogy for comparison. The Project crosses through at least two geographic regions, the north and south Slave regions, and features two distinct operational components: the Generation Expansion and the Linear Transmission Line. As such, the criteria adopted in the MGP is relevant in assessing the significance of public concern in the case of the Project.

In the case of the MGP, the Review Board adopted four principal criteria for evaluation (set out on pages 10-11 of the Framework Paper): Frequency of Concern, Geographic Distribution, Source and Severity of Concern. Adopting the MGP criteria, Dezé submits that concern is limited to the areas of wildlife, fish and aquatic resources, spiritual/cultural matters and routing. However, as noted above, the stated concerns in these areas are raised only by local affected groups, including down to impacts upon individuals, as opposed to impacts upon communities. Having said this, Dezé recognizes the spiritual/cultural significance of the Lockhart River area, and has appropriately adjusted its routing over the Lockhart River waters to this effect.

With respect to the GKP, the Board noted in the Framework Paper that because this development was limited to one jurisdiction, some criteria adopted in the MGP were not particularly helpful. As a result, the Board adopted three new indicators: participation rates/level of effort expended by participants, likelihood of the development to raise public concern, and evidentiary support of adverse impacts in relation to stated concerns.

Applying the GKP indicators to the Project, Dezé notes again that the primary concerns expressed by Parties to this Project are focused on local individuals. Dezé would respectfully submit that this indicates that there is less widespread and deep-rooted concerns with the Project. With respect to the likelihood that the development may raise future public concerns, Dezé submits that because the Project has been discussed and raised in the public realm for well over three years, and the degree of participation in the proceedings has been limited to local organizations and community

groups, there is evidence that the Project is not likely to raise significant public concern outside of the local and regional concerns stated.

Lastly, the record does not contain any significant evidence of proven adverse impacts on the environment with respect to the Project. This suggests the third GKP indicator is not met.

Taking the foregoing into account, it is Dezé's respectful submission that the Board should conclude that the Project is not likely to be a cause of significant public concern.

#### **4. Proposed National Park**

In the DAR, and during the technical sessions and public hearings, Dezé recognized that the Project would impact the proposed East Arm National Park, and has proposed measures to reduce these impacts. These have included mitigation such as commitments to use hand clearing methods in favour of mechanical clearing and winter roads in the 1970/1997 withdrawal area, and to investigate means of reducing aesthetic impacts.

Further, Dezé has offered to support gatherings, arts, traditional stories, exhibitions or cross-cultural initiatives to preserve the spiritual, cultural and wilderness value of the proposed Park. Dezé stands by these commitments, and is willing to entertain other proposals. Dezé recognizes that these efforts would reduce rather than remove impacts to the proposed Park, but these impacts should be viewed by the Board in consideration of the environmental and economic benefits of the Project.

#### **5. Existing Commercial Activity**

Both the Carter family and Parties commenting on the Reliance Adjustment have asserted that areas such as Nonacho Lake and the East Arm are free from commercial development, and that the Project would interfere with or disturb the local environment.

As neighbours and owners who live and enjoy these areas, Dezé recognizes their special and unique nature. Our commitments to respect and protect these areas are set out in both the DAR and in our Table of Commitments.

The Board has heard in recent submissions (Finlayson, DeCorby and Shergold) that significant commercial activity takes place in the Fairchild Point area in the form of recreational fishing, fuel storage and aviation. With respect to the Reliance crossing, we believe the Project's operational impacts in the area, once construction is complete, will not materially increase the level of activity above that which is already present in these areas.

## **VIII. CONCLUSIONS**

### **East Arm / Lockhart Crossing**

As local owners, we are very respectful of the concerns of our neighbours and communities. Our willingness to identify and consider other locations to cross the Lockhart waters, including the Reliance Adjustment, is an example of how we respect these concerns and act on them.

Until we had the opportunity to hear the concerns of the LKDFN regarding areas of cultural and spiritual importance in the East Arm area we were unable to address these issues. Now that we have feedback from local stakeholders we are confident that:

- there are several viable ways to cross the Lockhart waters from an engineering and economic perspective;
- the DAR is predictive of the environmental effects (impacts) associated with all crossing options;
- we can perform confirmatory studies associated with any change to the crossing of Lockhart waters; and
- mitigative measures can be adopted to reduce or eliminate adverse impacts, and we are committed to implement viable measures.

With respect to the LKDFN, our assessment is that they have concerns no matter which Lockhart crossing location is adopted for the Project, be it in the Desnedhe Che area or the Kache area. For other Parties, concerns with the Reliance Adjustment are centered upon aesthetic, tower location and in some cases business impacts.

While it is not clear the extent to which the Project will affect the business operations in the Reliance area given the level of existing commercial activity there already, we do recognize the concerns of local stakeholders with respect to aesthetic impacts and tower locations.

Ultimately, the Board has to recognize that there will be trade offs between concerns related to spiritual and cultural significance, and concerns in the other areas noted above. Dezé submits that the record shows that we are able to feasibly address these other areas and eliminate or mitigate their impacts.

We are confident that with the input from a routing committee, comprised of representatives from all Parties who have expressed an interest in the specific crossing option to be chosen, we can determine the best option and the mitigative measures necessary to reduce or eliminate any adverse impacts.

### **Environmental Assessment**

The process for environmental assessment which the Board has carried out under its statutory mandate has worked well and allowed issues of concern to be identified, scoped and addressed with commitments or clarifications.

As such, Dezé submits there is no basis on the record of this proceeding upon which the Board should order that an environmental impact review be carried out.

Moreover, none of the federal and territorial agencies and regulators has suggested in their submissions or evidence that a review be carried out, whether on the basis of likelihood of significant public concern or of significant adverse impact on the environment. Parties making a request for review are basing their request on grounds already considered by the agencies and regulators and found not to justify a review.

Further, while localized concerns have been raised on specific issues, the record does not indicate that the Project is likely to be a cause of significant public concern.

Simply put, given the extensive amount of information and evidence filed on the record of the proceeding by all Parties, together with our commitments, we submit an environmental impact review will not provide the Board or stakeholders with any new information or opinions, and the Project should be recommended to the Minister with the appropriate recommendations.

As stated in our closing submissions at the oral hearing, this Project is unprecedented in the North. Through our ownership and business structure, the Project will be managed by Northerners and be for their benefit.

Dezé therefore recommends that the Board approve the Project.

*FW Dean Carter Summary of Meeting Jul 2007.txt*  
*APPENDIX I*

*From: Dan Grabke*  
*Sent: May 5, 2008 3:47 PM*  
*To: Claire H. Smith*  
*Subject: FW: Dean Carter Summary of Meeting*

*I'll look for his business card tomorrow.*

*Dan Grabke*  
*Director, Business Development*  
*NWT Energy Corporation (03) Ltd.*  
*#206-5102-50th Ave*  
*Yellowknife, NT X1A 3S8*  
*(P) 867-669-3390, ext 226*  
*(F) 867-669-3395*  
*(C) 867-445-4414*

*From: Darren Huculak*  
*Sent: July 12, 2007 1:43 PM*  
*To: Dan Grabke*  
*Subject: Dean Carter Summary of Meeting*

*Hi Dan:*

*Dean Carter from Carter's Lodge came in to see me the other day (Tuesday July 10, 2007) to discuss the Taltson Hydro Expansion Project. As you know, the Lodge is right on Nonacho Lake and so the Carter family is a key stakeholder in the project. I would characterize the meeting as being extremely positive, with Dean bringing more of a 'what can we do to help' point of view than an adversarial one.*

*In general, he noted that although every project will likely have some impact, in his opinion the reduction of greenhouse gas emissions and the reduction of traffic on winter ice roads are benefits that outweigh any costs he can think of for the expansion project. Some specific comments he made were:*

*FW Dean Carter Summary of Meeting Jul 2007.txt*

*&#9632; He expressed the desire to work with Dezé Energy to facilitate the use of the lodge or any other of his properties as work campsites during the construction phase of the Taltson Expansion Project, even suggesting that additional lodging could be places in his permitted land use area if the current facility is not sufficient to house all the required amount of workers;*

*&#9632; That the lodge is permitted for an airstrip that has not yet been developed. He wasn't sure about permitted size, but he was going to review the documents. He suggested it may be something that Dezé could develop for the project;*

*&#9632; He has other sites along the east arm that could potentially be used for staging areas.*

*All in all it was a very positive conversation and he asked that I have you contact him to discuss some of these issues further.*

*Cheers:*

*Darren Huculak  
Manager, Project Development and Finance  
NWT Energy Corporation (03) Ltd.  
206, 5102 50th Ave.  
Yellowknife, NT, X1A 3S8  
Tel: (867) 669-3390 (ext. 222)  
Fax: (866) 233-2109  
dhuculak@nwtec.ca  
www.nwtec.ca*