



Ottawa, Canada K1A 0H4

DEC 10 2010

Mr. Richard Edjericon
Chair
Mackenzie Valley Environmental
Impact Review Board
PO Box 938
YELLOWKNIFE NT X1A 2N7

Dear Mr. Edjericon:

**Re: Report of Environmental Assessment and Reasons for Decision:
EA0708-007: Dezé Energy Corporation's Taltson Hydroelectric
Expansion Project**

On behalf of the Responsible Ministers for departments with jurisdiction over the Dezé Energy Corporation Taltson Hydroelectric Expansion Project (the Project), which include: Indian and Northern Affairs Canada, Environment Canada, Fisheries and Oceans Canada, Natural Resources Canada, Transport Canada, Parks Canada and the Government of the Northwest Territories – Environment and Natural Resources, I am writing to convey our decision on the recommendation that was made by the Mackenzie Valley Environmental Impact Review Board (the Review Board) pursuant to sub-paragraph 128(1)(b)(ii) of the *Mackenzie Valley Resource Management Act* (the Act).

In its Report of Environmental Assessment and Reasons for Decision (the Report), the Review Board recommended that the Project be approved subject to the implementation of specified measures to prevent potential significant adverse impacts to the environment.

The Responsible Ministers have carefully reviewed the Report and the Review Board's recommendation and have determined that the Report should be returned to the Review Board for further consideration, pursuant to sub-paragraph 130(1)(b)(i) of the Act.

The Responsible Ministers have determined that the Report (and therefore, the Review Board's decision pursuant to section 128 of the Act) is incomplete. The scope of the proposed development and the scope of the environmental assessment as determined by the Review Board include the expansion of the hydroelectric facility, plus the construction of a transmission line. The Report fails to fully assess the potential impacts of a transmission line as a necessary part of the development, and therefore, the assessment of the development is incomplete.

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Although we consider the environmental assessment to be incomplete, to assist the Review Board, we provide the following comments in regard to the Measures contained in the Report.

Measures 1 and 2:

The Responsible Ministers do not object to Measures 1 and 2 as written. However, we wish to provide clarification that Indian and Northern Affairs Canada (INAC) cannot issue a lease on the east side of the Slave River, on Crown Land, since these lands are temporarily withdrawn from disposal during comprehensive claim negotiations.

Measure 3:

The Responsible Ministers support Measure 3 in principle, but request that the Review Board reconsider the wording of each of the parts to add clarity.

With regard to *Part (i)*, the Responsible Ministers request that the Review Board consider adding the monitoring of water birds to the adaptive management plan, recognizing specifically the status of the Horned Grebe as a species of Special Concern by the Committee on the Status of Endangered Wildlife in Canada. The Responsible Ministers would also request the Review Board to consider the inclusion of fish and fish habitat to this measure in order to encourage the development of one comprehensive adaptive management plan that addresses all environmental components of concern in Trudel Creek. Sections of the adaptive management plan pertaining to fish and fish habitat could be harmonized with conditions of a *Fisheries Act* authorization.

With regard to *Part (ii)*, the Responsible Ministers request that the Review Board quantify the additional bypass capacity required at the Twin Gorges facility, and seek additional information in this regard, if required.

Measures 4 and 5:

Measures 4 and 5 are inter-related and are considered together.

Measure 4 states that the developer may not place a transmission line across the Lockhart River, anywhere from the mouth of the river at Fort Reliance, to Artillery Lake.

This measure removes from consideration the primary route proposed by Dezé as part of the development assessed during the Review Board's environmental assessment.

In response to public concerns raised at the Public Hearing, Dezé presented two alternative transmission routes which the parties and the general public had an opportunity to comment on as part of the environmental assessment of the proposed development. One indicated a crossing of the Lockhart River near Artillery Lake, and the other indicated a crossing of Great Slave Lake near Fort Reliance. Measure 4 not only rejects Dezé's proposed and preferred Lockhart transmission line route, but also eliminates the Artillery Lake alternative. Dezé was clear in its final submission of May 12, 2010, that the remaining Reliance route option is not the Project's proposed transmission line route. As a result, the Responsible Ministers conclude that the Project's transmission line route remains unknown.

Without a proposed and accepted route, the Review Board, via Measure 5, leaves the decision to determine a transmission line route to a committee. Unless expressly authorized to do so, a tribunal may not delegate its powers to another body and there are no provisions in the Act to authorize the Board to do so. The Responsible Ministers do not accept that an environmental assessment of, and a decision on, a final transmission line route can be delegated by the Review Board to a routing committee and conclude that the Review Board is improperly delegating its responsibilities under the Act in doing so.

The Responsible Ministers further agree that while the Review Board solicited additional information specific to the Reliance route, the Report does not specifically analyze or make any determinations regarding the potential significant impacts of this route. As Crown representatives, the Responsible Ministers also agree that more information is required from potentially affected Aboriginal groups, in particular the Lutsel K'e Dene First Nation, in order to be able to assess potential impacts to established or potential Aboriginal or Treaty rights of any transmission line route besides the proposed Lockhart River route.

The Terms of Reference for the Project's Developer's Assessment Report as set by the Review Board define the scope as follows (p.4):

"The expansion of hydroelectric generation facility and the establishment of an electricity transmission line, as well as activities or structures associated with the principal development, from pre-construction to closure and reclamation."

The scope of this development clearly includes both (i) expansion of the hydro facility and (ii) the construction of a transmission line. The Responsible Ministers are of the opinion that since the assessment concerning the transmission line has not been completed, the assessment as a whole cannot be concluded.

The Responsible Ministers have carefully considered the Report and have provided the Review Board with their analysis of the recommendation and measures. The Responsible Ministers suggest that the Review Board consider means of obtaining additional information from the developer and the potentially affected parties, including Aboriginal groups, land owners and rights holders in the area, in order to address the deficiencies we have noted. We expect that this additional information will assist the Board in conducting a complete assessment of the potential significant impacts on the environment of any alternatives proposed by Dezé, and will result in the determination of the transmission line route.

In the meantime, the Responsible Ministers agree to return the Report for further consideration on the basis that no final transmission line route has been proposed or assessed for potential significant impacts and as a result, the Review Board's environmental assessment and Report are incomplete.

For this environmental assessment, I have taken the liberty of sending a copy of this correspondence to the other Responsible Ministers: the Honourable Chuck Strahl, Minister of Transport, Infrastructure, and Communities; the Honourable Jim Prentice, Minister of the Environment and Minister responsible for Parks Canada; the Honourable Christian Paradis, Minister of Natural Resources; the Honourable Gail Shea, Minister of Fisheries and Oceans; and the Honourable J. Michael Miltenberger, Minister of Environment and Natural Resources, Northwest Territories.

Sincerely,

A handwritten signature in black ink, appearing to be 'John Duncan', with a stylized, flowing script.

John Duncan, PC, MP

c.c.: The Honourable Chuck Strahl, PC, MP
The Honourable John Baird, PC, MP
The Honourable Christian Paradis, PC, MP
The Honourable Gail Shea, PC, MP
The Honourable J. Michael Miltenberger, MLA