

# Letha J. MacLachlan, Q.C.

Environmental and Resources Law



February 18, 2010

Mackenzie Valley Environmental Impact Review Board  
200 Scotia Centre  
Box 938, 5102 – 50<sup>th</sup> Ave  
Yellowknife, NT X1A 2N7

Attn: Mr. Martin Haefele

Dear Sir;

RE: Taltson Hydroelectric Expansion Project  
The Reliance Route Adjustment

I have been asked by Mr. Wallace Finlayson, Mr. Ray Decorby and Mr. Spencer Decorby to represent them in relation to the above noted project and to assist them in responding to e-mail communication received by them from Mr. Alan Ehrlich, Senior Environmental Assessment Officer with the MVEIRB. That e-mail advised that “the developer has recently proposed changing the transmission line route to extend past Reliance following the peninsula between Charlton Bay and McLeod Bay.” It also advised that “the general public record is now closed for this assessment” but that “an exception will be made for comments about this route only.” A two week period was provided for submission of comment. Mr. Finlayson received his notification February 1, 2010 whereas the Decorby’s were notified February 3, 2010. In its undated letter to the MVERIB found on the public registry as document 1265220040, Deze Energy referred to this new route as the “Reliance Adjustment”.

Messrs. Finlayson and Decorby (referred to here as the property owners) have prepared their own submission about the importance of the area that would be affected by the proposed Reliance Adjustment. Those submissions have been filed with the Board separately. This letter serves to augment those concerns in the overall process in which these property owners find themselves. A map indicating the location of these properties is attached to the submission of Mr. Ray Decorby.

## 1. Standing

- a. Mr. Finlayson owns and operates a lodge under long term lease on Fairchild Point that is in close proximity to the proposed right of way for the power transmission line contemplated in the Reliance Adjustment.
- b. Mr. Ray Decorby owns a cabin on Fairchild Point that he has used and occupied since the 1970's. It is also in close proximity to the proposed right of way for the power transmission line contemplated in the Reliance Adjustment.
- c. Mr. Spencer Decorby owns a cabin on lands he leases in Charlton Bay.

The properties of Mr. Finlayson and Mr. Decorby are located on the peninsula that runs from Reliance to Fort Reliance. Mr. Spencer Decorby's property is on the peninsula just across from (to the north) the proposed barge landing site at Charlton Bay as marked on Figure 1 titled 'Conceptual Reliance Route Option' in the DAR dated January 2010 as contained in the Supplemental Submission of Deze Energy posted on the MVEIRB registry January 26, 2010 as Document 1265220040. All three properties are within the boundaries of the proposed national park for the East Arm of Great Slave Lake (referred to throughout this submission as the Thaydene Nene National Park). Any transmission line associated with the Reliance Adjustment would be in full view of these properties.

## 2. Lack of reasonable consultation

- a. As each of Messrs. Finlayson and Decorby have pointed out in their submissions, they have had two weeks' notice that a Right of Way for a power transmission line is being proposed to cross directly or adjacent to and in plain view of their property. Two weeks is neither a sufficient nor a reasonable amount of time for them to be apprised of Deze Energy's proposed development or the effects of that development on their property. Neither has it afforded them a reasonable amount of time to present their views.
- b. With respect to both of the Decorbys, the original notification about the proposed power line came from staff at the MVEIRB – not the developer. In the case of Mr. Finlayson, he was contacted by MVEIRB staff and then by e-mail from Mr. Grabke, general manager of the proponent, 10 days prior to the MVEIRB's deadline for filing comments on the Reliance Adjustment.
- c. None of these property owners has been active in the environmental assessment of the Taltson Hydro Expansion Project and, with the exception of the communication referred to above, have not received any information from the proponent on the project or its potential impacts on their property or on the nearby cultural and heritage sites within the

proposed national park. Their first encounter with the MVEIRB's process was associated with the communication received from Mr. Ehrlich, referred to above.

- d. As the Decorbys pointed out in their submissions, not all parties who have jurisdictional interests in the Reliance Adjustment may have been notified of this potential route. [e.g. Transport Canada in reference to aerodrome (CJN8)]

**3. Lack of sufficient information from the proponent** on the nature and significance of potential impacts arising from the transmission line along the Reliance Adjustment

There are a number of concerns associated with the scarcity of information on the Reliance Adjustment:

- a. Insufficient information for the MVEIRB to fulfill its mandate  
Through implementation of provisions of the *Mackenzie Valley Resource Management Act* the mandate of the MVEIRB is to protect “the environment from the significant adverse impacts of proposed developments” and to protect “the social, cultural and economic well-being of residents and communities in the Mackenzie Valley. [section 115. (a) and (b)]. A quick review of the information that is on the public registry reveals that there is virtually no detailed information on the route of the Reliance Adjustment or on the effects its construction or operation would have on the biophysical environment or on the social, cultural and economic well-being of residents that would be affected by the transmission right-of-way.

- b. Lack of a ‘mature’ route option for the transmission line  
Based on a review of the public registry, a number of alternative routes have been considered by the proponent. However, it is not clear that consideration of these routes has benefitted from a broad and in depth analysis. The quick and shallow consideration of various routes prior to their rejection does not inspire confidence that they are anything more than a desk top exercise. The arbitrary drawing of a line on a map lacks context associated with the location of that line and its sensitivity to the importance of the environment in which that line is drawn, including the cultural, archaeological and historic resources that are found there.

Importantly, the registry indicates that there has been limited dialogue on the routing options in the context of sustainability. There is also very little information about the social, cultural and economic impacts these route options would have on the northern economy.

- c. Lack of procedural fairness  
Through a process of elimination, the proponents of the Taltson Hydro Expansion Project appear to have settled on the Reliance Adjustment as

their final route. This option was put forward at the last minute. By closing its record to all aspects of the Expansion Project except the Reliance Adjustment, the MVEIRB seems to have accepted two things: a transmission route through the proposed Thaydene Nene National Park and the Reliance Adjustment to that route. However, by isolating their consideration of the Reliance Adjustment to a ‘sidebar’ exchange of written comments, the Board is not affording affected parties, the public or itself the opportunity to probe impacts on the environment that would be likely to arise from this route in its entirety.

While the proponents have stated they would provide information on the Reliance Adjustment to stakeholders at a later date, that information would only be with respect to the size, construction material and specific location of transmission towers along the route. That information would not amount to identification and assessment of the impacts on the environment arising from that route and the information exchange would occur only after the Board has closed its registry. Messrs. Finlayson and Decorby would thereby be denied an opportunity to review or respond to that information in the context of an environmental assessment or to participate fully in the public forum established for the environmental assessment of the Expansion Project as a whole.

In addition, neither the board nor the public would have the opportunity to review the impact of the entire transmission line or to review the impact of the transmission line through the proposed National Park.

**4. Failure on the MVEIRB to follow a process that accords proper deference to assessment of impacts from an industrial project on the natural, cultural and legacy values of a proposed national park**

The proposed power transmission line is for an industrial purpose. The Reliance Adjustment and the route of which it is a part, would carve through the middle of a proposed national park for which lands have been withdrawn by the Government of Canada. On its face, this route is an activity that is not compatible with the purposes associated with the creation of a national park. The *National Parks Act* dedicates Canadian national parks to the people of Canada “for their benefit, education and enjoyment” to be “maintained and made use of so as to leave them unimpaired for the enjoyment of future generations.” [s. 4]

The very enshrinement of lands identified for protection as national parks surely requires a higher standard to be met when assessing the impacts of proposed activities within their boundaries and when affording the public an opportunity to participate in the review of those impacts. If an industrial activity is to be permitted within a proposed national park then the level of scrutiny of those impacts, the degree of care taken to prescribe mitigation or remedial measures and the justification for allowing that project should be commensurate with the level

of protection contemplated for that area in the first place. Common sense would suggest that that level would be very high. However, the brief amount of time afforded the property owners to review the public registry for the Taltson Hydro Expansion Project would indicate that that standard has not yet been met with respect to the industrial project proposed for the Thaydene Nene National Park.

## **5. Potential effects from the Reliance Adjustment**

My clients have recently and unexpectedly been drawn into a process that has been going on for some time. In the absence of adequate information about the proposed Reliance Adjustment they have tried to identify some of the effects that are likely if this route were to proceed. There should be a forum within which the significance of these impacts are addressed and, if this route is chosen, effectively mitigated. Effects identified by my clients include:

### a. Visual and auditory impairment

Each of the property owners has expressed their concern about the negative impacts the transmission line would have on the spiritual nature and the value of the wilderness experience to them and to any visitors to the proposed Thaydene Nene National Park.

### b. Impacts on wildlife

In his e-mail to Mr. Ehrlich of Feb 4, 2010, Mr. Spencer Decorby expressed concern about the impacts of overhead transmission lines to goose migration routes and their general well being. He drew attention to the annual spring migration of geese that takes place off Maufelly Point, the Belle Isle narrows and the mouth of the Lockhart River and the fact that these locations have open water for an extended period of time at either end of the summer season and that geese heading north to their summer breeding grounds depend on this open water.

In his submission to the MVEIRB, Mr. Spencer Decorby also drew attention to the potential impacts on fish as a result of underwater cables and on the above-ground transmission facilities on species at risk that frequent the Reliance area including Barrenland Grizzly and Peregrine Falcon.

### c. Impacts on the aesthetic quality of the wilderness experience

Mr. Finlayson has stressed the importance to visitors to Trophy Lodge of the wilderness experience. Hydro-electric transmission towers and aerial power lines would impair that experience significantly. The nature of the impairment would be visual as well as auditory. In addition, there would be physical disruption during the construction phase. Both Mr. Ray Decorby and Mr. Spencer Decorby have expressed similar concerns about the impairment of their enjoyment of their property if a power transmission line were to be built between Maufelly Point and Fairchild Point.

- d. Impacts on economic interests  
Mr. Finlayson has stated that impacts from construction activities and operation of an industrial power transmission line adjacent to his property would be adverse and significant on his business. Visitors who come to the Trophy Lodge would be discouraged from staying at the lodge in favour of finding a location where there truly was pristine wilderness.
- e. Impacts on heritage resources  
Messrs. Finlayson and Decorby have identified just some of the literature that documents the adventures of visitors to the peninsula between Reliance and Fort Reliance and the historic importance of this area and the artifacts of archaeological and historic importance to be found there.
- f. Impacts on aviation safety  
The Decorbys have outlined in their submissions the potential impacts on the aerodrome at Reliance and the safety concerns associated with the introduction of a power transmission line in that area.

## 6. Recommendations

In light of those potential effects, Mr. Finlayson, Mr. Ray Decorby and Mr. Spencer Decorby have asked that I confirm their desire to make the following recommendations to the MVEIRB in relation to the Reliance Adjustment:

- a. THAT the Reliance Adjustment be rejected as an alternative route for the hydroelectric transmission line from the Talston Hydroelectric dam to existing and potential mines north of Great Slave Lake; and
- b. THAT the proponent of the Reliance Adjustment, Deze Energy Ltd. be required to identify additional alternative routes that are more appropriate and that respect the values that honour the creation of a national park and the protection of the cultural and historic resources of the area; and
- c. THAT, in the event the Taltson Hydro Expansion Project includes the Reliance Adjustment or any other route to transmit hydroelectricity through the proposed Thaydene Nene National Park, the MVEIRB acknowledge that
  - i. the transmission line might have significant adverse impacts on the environment and
  - ii. is of public concern
 and refer the route for the transmission line portion of the Taltson Hydro Expansion Project to environmental impact review under the *MVRMA*.

In addition, the property owners feel that insufficient consideration has been given to the long term environmental, social and economic benefits and impacts associated with the three route alternatives the proponent has generally referred to as:

- Baseline Alternative (along the east side of Great Slave Lake);

- Trans-Island or Submarine Cable option (down the centre of Great Slave Lake); and
- West Route (along the west side of Great Slave Lake).

They are of the view that these routes should be examined in a much more fulsome way that engages a broader range of northern citizens and addresses issues of sustainability and fiscal responsibility. Therefore they make the additional recommendation:

THAT the MVEIRB acknowledge that the routing of the Taltson Hydro Expansion Project transmission line is of public concern and therefore refers the Taltson Hydro Expansion Project to an Environmental Impact Review under the *MVRMA*.

### Summary

Mr. Finlayson, Mr. Ray Decorby and Mr. Spencer Decorby would like to make it clear that they are not against the provision of hydroelectric energy to the mining operations north of Great Slave Lake. It is their sincere hope that an alternative route could be found that would have less significant adverse effects on the environment. They are strong supporters of mining in the Northwest Territories and recognize its importance as an economic lifeline to the sustainability of the northern community.

However, these gentlemen do not support the route identified in the Reliance Adjustment. In their view the Reliance area is an extraordinarily special place within a special land – referred to by Mr. Decorby as the jewel in the crown – and is therefore worthy of protection. If it is actually the proponents ‘final’ route, then the Reliance Adjustment would be best considered in a broad public forum that is commensurate with the specialness of an area of the stature of a proposed National Park. The process should not be relegated to private meetings between a few property owners and the proponent for the purpose of “refining the pole configurations ... and tower locations ... to minimize impacts of final design and construction, during the permitting phase of the project.” [see Deze Energy February 11, 2010 memo entitled “Re: February 3<sup>rd</sup> Note to File”]

More broadly still, these landowners feel there is an obligation on Deze Energy, one third of which is publicly owned, to fully explore transmission route alternatives that address the needs, concerns and aspirations of northerners on a long term sustainable basis.

Each of these gentlemen has expressed their deeply felt belief that the profound beauty and historical richness of the Reliance area and the need for its protection goes well beyond them as individuals and the properties they enjoy. They appreciate the uniqueness and the magic of this area and feel a duty to see that it is protected – and protected in a way that was contemplated and dreamed about by many people over the decades and indeed centuries. Formal steps have been taken to withdraw lands in this area for the purpose of putting in place protections that would preserve its wilderness for

all Canadians through creation of a National Park. It is these protections that Mr. Finlayson and Messrs. Decorby would like to see honoured.

Sincerely,

Letha J. MacLachlan, Q.C.

*Originally signed by Letha J. MacLachlan, Q.C.*