

Ministre des Affaires indiennes et
du Nord canadien, interlocuteur fédéral
auprès des Métis et des Indiens non inscrits et
ministre de l'Agence canadienne de développement
économique du Nord



Ottawa, Canada K1A 0H4

Minister of Indian Affairs and
Northern Development, Federal Interlocutor
for Métis and Non-Status Indians and
Minister of the Canadian Northern Economic
Development Agency

DEC 10 2010

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

Mackenzie Valley Land
& Water Board

File

DEC 14 2010

Application # MV2007LA-0029
MV2007T0033

Copied To KG/Reg

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.

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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.

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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,



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

FAX/MEMO

Subject: Copy of letter to Mackenzie Valley Environmental Impact Review Board Re: Deze Energy Corp. Ltd.'s Taltson Hydroelectric Expansion Environmental Assessment - Report of Environmental Assessment and Reasons for Decision

Date: December 14, 2010

To:

Chief Martselos	Salt River First Nations	867-872-3550
Chief Paulette	Smith Landing First Nation	867-872-5154
Chief Sangris	Yellowknives Dene First Nation (Dettah)	873-5969
Chief Tsetta	Yellowknives Dene First Nation (Ndilo)	873-8545
Chief Michel	Lutselk'e Dene First Nation	867-370-3010
Chief Balsillie	Deninu K'ue First Nation	867-394-5122
Eddie Erasmus	Lands Protection Environment, Tliche Government	867-392-6862
Dora Enzoe	Akaiicho Treaty #8 Tribal Corporation	867-370-3209
President Hudson	President, Fort Smith Métis Local	867-872-5225
President Villebrun	President, Northwest Territory Métis Nation	867-872-2772
President Bailey	Fort Resolution Métis Council	867-394-3322
President Harrington	President, Hay River Métis Council	867-874-4472
Ron Robillard	Athabasca Denesuline Chief Negotiator c/o Prince Albert Grand Council	306-763-2973
President Enge	North Slave Métis Alliance	669-7442
Stephen Ellis	NWT Treaty 8 Tribal Corporation	867-873-8728
Stephanie Poole	Akaiicho IMA Implementation office	867-370-3209
Chris Heron	NWTMN – Environment Manager	867-872-2772
Jody Snortland	Wek èezhii Renewable Resource Board	873-5743
Zabey Nevitt	Mackenzie Valley Land and Water Board	873-6610
Mayor McKay	Hamlet of Fort Resolution	867-394-5415
Mayor Hobart	Town of Fort Smith	867-872-8401
Mayor Schofield	Town of Hay River	867-874-3237
Mayor Van Tighem	City of Yellowknife	920-5649
Amy Lizotte	GNWT - ENR	873-4021
Matt Spence	NPMO	766-8469
Nicola Johnson	DFO	669-4940
Lisa Perry	Environment Canada	873-8185
Wendy Botkin	Parks Canada	204-983-0031
Sophia Garrick	Transport Canada	204-984-5048
Shelley Ball	NRCan	613-995-5719
Dan Grabke	Deze Energy Corp. Ltd.	669-3395

**cc: Alan Erlich, Mackenzie Valley Environmental Impact Review Board (MVEIRB)
867-766-7074**

From: Candace DeCoste, Department of Indian Affairs and Northern Development

Number of Pages: 6, including this one

Attached please find a December 10, 2010 letter from the Minister of Indian Affairs and Northern Development to the Chair of the MVEIRB, conveying the Responsible Ministers' decision under sub-paragraph 130(1)(ii) of the *Mackenzie Valley Resource Management Act* (MVRMA) to return for reconsideration the MVEIRB's recommendation with respect to the Taltson Hydroelectric Expansion Project, as contained in the *Report of Environmental Assessment and Reasons for Decision on the EA0708-007: Dezé Energy Corporation Ltd. Taltson Hydroelectric Expansion Project*.

This letter is being distributed in accordance with sub-paragraph 130(4) of the MVRMA, which states:

The Federal Minister shall distribute a decision made under this section to the Review Board and to every first nation, local government, regulatory authority and department and agency of the federal or territorial government affected by the decision.

Please distribute this letter within your organizations as appropriate. You may have already received the letter from the MVEIRB, which has posted it to its Taltson Hydroelectric Expansion Project public registry website.

Please contact me if you have any difficulties with the transmission.

Phone: 867-669-2407 Fax: 867-669-2701 Email: Candace.Decoste@inac-ainc.gc.ca