



NIRB File No.: 08MN053
NWB File No.: 2AM-MRY1325
QIA File No.: LUA-2008-008
DFO File No.: 2008 MR

April 10, 2021

Tess C. Layton
Reynolds Mirth Richards and Farmer LLP
3200 Manulife Place, 10180-101 Street
Edmonton, AB T5J 3W8

Lloyd Lipsett
Advisor to NITV

Sent via email: tlayton@rmrf.com

lloyd@lklinternational.com

Re: NIRB File No. 08MN053 – Correspondence from Nunavut Independent Television Network requesting advance permission to rebroadcast or retransmit live video and audio feeds of the upcoming extension of the reconvened Public Hearing (April 12-21, 2021)

Dear Tess Layton and Lloyd Lipsett,

On February 24, 2021 and April 6, 2021 the Nunavut Impact Review Board (NIRB or Board) issued the Board's guidance to Parties and the media that indicated that in keeping with the Board's approach to media coverage of Public Hearings, that while the Board is in decision-making for the file, the rebroadcast or retransmission of the live feed from the reconvened Public Hearing for the Phase 2 Development Proposal (the Phase 2 Proposal), which took place on January 25 through February 6, 2021 (the reconvened Public Hearing) and the upcoming extension of the reconvened Public Hearing (April 12-21, 2021) was prohibited in any form unless the Board granted express written permission. In the attached correspondence, on April 9, 2021, Ms. Layton, legal counsel for the Nunavut Independent Television Network (NITV) indicated the following:

If NIRB grants NITV advance permission to rebroadcast [the upcoming extension of the reconvened Public Hearing on April 12-21, 2021], NITV will adhere to the other conditions listed on page 6 and 7 of your April 7th [sic April 6th] letter.

As previously communicated to Lloyd Lipsett, advisor to NITV, the Board's staff and legal counsel were unavailable to respond or post NITV's April 9th correspondence as they were in

transit to Iqaluit for the extension of the reconvened Public Hearing all day yesterday and this morning.

After receiving Ms. Layton's formal correspondence, Mr. Lipsett subsequently provided an email indicating that NITV would comply with the Board's directions conveyed by the NIRB's Chair in correspondence issued by the Board on April 6, 2021. By way of this correspondence, the Board seeks to clarify two points raised in Ms. Layton's correspondence and seeks confirmation of NITV's position as to whether they agree to comply with the Board's directions to NITV, the media and participants on April 6, 2021.

At the outset, the Board emphasizes that the NIRB has greatly appreciated, and valued NITV's (and their predecessor, Isuma TV's) commitment and collaboration with the Board to extend access to the Board's proceedings starting in 2012, with Isuma TV making the original Mary River Project Public Hearings available on the internet, and again in 2014 during the Public Hearing associated with the modification to the Mary River Project under the Early Revenue Phase Proposal. From the NIRB's perspective, the foundation of this collaborative working relationship has been mutual respect and understanding of the roles and responsibilities of the Board and NITV/Isuma TV. On this basis, the Board has granted exceptional access to NITV/Isuma TV to film and access the Board's live feeds during public hearings. In NITV's recent correspondence, you reference Commissions of Inquiry and other administrative proceedings where rebroadcasts have occurred. The Board must point out that the rebroadcasts of these proceedings have not been granted to third party private media outlets and are typically rebroadcast by the tribunal on CPAC or the tribunal's own website or You Tube channel. Granting third party rights to commercial broadcasters to even connect to the tribunal's feeds are not typical and very different considerations must go into a tribunal's decisions to permit third party access at the time such requests are made.

In addition, the Board takes issue with NITV's characterization that the Board's prohibition of rebroadcast or retransmission of prior proceedings while the Board is in decision-making is a change in Board practice. In both of the Board's previous assessments, there was only one Public Hearing session extended over several days. Upon the close of the Public Hearing session, the Board engaged in decision-making, and issued the Board's Report and Recommendations within 45-60 days after the conclusion of the Public Hearing and rebroadcasting of proceedings occurred thereafter. As is obvious, that is not the case with the Board's assessment of the Phase 2 Development Proposal. The Panel continues to be in decision-making, with two Public Hearing sessions having been completed in November 2019 and January-February 2021 and the third session upcoming. The Board's policy with respect to rebroadcast or retransmission has remained the same, that while the Board is engaged in decision-making, the Board will not consider requests for rebroadcast or retransmission of the proceedings associated with the assessment. This has been conveyed to NITV and other media outlets consistently and is a standard practice amongst administrative tribunals across Canada. The Board will not entertain a general advance request for rebroadcast or retransmission rights, as requested by NITV at this time, because the Board

considers each request for such rights only after decision-making has been completed and then bases their decision on the circumstances surrounding the specific request at the time it is made.

Consequently, it is unclear to the Board whether in light of the conditional statement made by Ms. Layton and statements made by NITV representatives to media outlets this week responding to the release of the Board's April 6, 2021 direction to media, whether NITV will comply with the Board's direction to access and broadcast the live feed of the upcoming extension of the reconvened Public Hearing or not. As I am preparing and travelling to Iqaluit for the remainder of today and all day tomorrow, please confirm in writing addressed to the Board's Executive Director, Karen Costello at kcostello@nirb.ca if NITV agrees to comply with all of the Board's directions to media issued by the Board on April 6, 2021 .

Sincerely,



Marjorie (Kaviq) Kaluraq
Chairperson
Nunavut Impact Review Board

cc: Mary River Distribution List
Megan Lord-Hoyle, Baffinland Iron Mines Corporation