

Rick Lindgren

From: "Rick Lindgren" <r.lindgren@sympatico.ca>
To: "José Etcheverry" <Jose@davidsuzuki.org>; "Julia Langer" <jlanger@wwfcanada.org>;
 "KeithStewart" <KStewart@wwfcanada.org>; "mark winfield" <markw@pembina.org>
Sent: Thursday, June 08, 2006 10:45 AM
Subject: Re: EAs and nukes

Agreed. I'm not conceding the Crown's argument re OPG's status, but even if it is technically correct, it has little or nothing to do with EA coverage of the IPSP itself.

One EA case that is sort of similar is the old Petro-Sun EFW facility. There, even though the proponent was a private company, the Joint Board found that it was, in fact, acting as the agent or "alter ego" of the municipality for waste disposal purposes (even though Peel had no control over the company). Therefore, the company had to do a proper "alts to" analysis just as if it were a municipal proponent. Not directly on point, but sort of helpful...

If it becomes necessary to initiate j.r. proceedings in the individual EA context, obviously the question of OPG's exact status as Crown agent would have to be more fully investigated & fleshed in the pleadings.
 RL

----- Original Message -----

From: mark winfield
To: Rick Lindgren ; José Etcheverry ; Julia Langer ; KeithStewart
Sent: Thursday, June 08, 2006 9:58 AM
Subject: Re: EAs and nukes

Thanks Rick,

I agree - I think Urquhart understands that, but is going after them on the individual EA question too.

I'm far from sure about their argument about OPG not being a Crown agency. It is clearly owned and controlled by the Crown, regardless of what the legislation may say (even more so re: the OPA where there is a power for the Crown to give directives), and would be acting on behalf of the Crown. I don't know if there are any cases on OPG's status, but I recall that the courts have taken a pretty dim view of these sorts of arguments about quasi-governmental alternative service delivery entities not being subject to the same rules as government agencies, particularly re: the Charter, even if the legislation creating them says they're not crown agencies.

Mark.

At 09:42 AM 6/8/2006, Rick Lindgren wrote:

Thanks, Mark – very interesting stuff. It appears to me that the Ont govt is (deliberately or otherwise) making an apples & oranges comparison & overlooking the significant difference between the IPSP & individual nuke facilities that may be proposed to implement the IPSP.

In fact, Anne O'H declined to answer Ian's very specific question re EA Act coverage of the IPSP. Even if OPG is not a Crown agency, this does not get the Ont govt off the hook for ensuring appropriate EA coverage of the overarching IPSP (for which OPG is not the proponent in any event).

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From: [mark winfield](mailto:mark.winfield)
To: r.lindgren@sympatico.ca; [José Etcheverry](mailto:Jose@davidsuzuki.org); [Julia Langer](mailto:jlanger@wwfcanada.org); [KeithStewart](mailto:KStewart@wwfcanada.org)
Sent: Thursday, June 08, 2006 9:22 AM
Subject: Fw: EAs and nukes

Dear all,

See below. As we anticipated they are trying to hide behind an argument that OPG isn't a public sector body and therefore not subject to the EA Act.

Mark.

Subject: Fw: EAs and nukes
 Date: Thu, 8 Jun 2006 09:02:58 -0400
 X-MS-Has-Attach:
 X-MS-TNEF-Correlator:
 Thread-Topic: EAs and nukes
 Thread-Index: AcaKTH8By7oV4d6UQ6O84fW69G7qYgANPhuwAB6ZrlA=
 From: "Urquhart, Ian" <iurquhart@thestar.ca>
 To: <markw@pembina.org>
 X-OriginalArrivalTime: 08 Jun 2006 13:02:59.0352 (UTC) FILETIME=
 [DE0DF980:01C68AFB]
 X-AuthenticatedSender: iurquhart@thestar.ca
 X-AntiVirus: Checked for viruses by Gordano's AntiVirus Software
 X-Server: High Performance Mail Server - <http://surgeemail.com> r=545410749
 X-Rcpt-To: <markw@pembina.org>
 X-Virus-Scanned: ClamAV 0.87.1/1403/Sun Apr 16 03:44:45 2006 v0.65-7406
 X-FriendScore: **: 2.000000 Message text disguised using base-64 encoding=2.0
 X-NotAscii: charset=utf-8
 X-IP-stats: Incoming Last 1, First 35, in=25, out=0, spam=0
 X-External-IP: 192.206.151.161

Fyi--iu

Rick Lindgren

From: "mark winfield" <markw@pembina.org>
To: <r.lindgren@sympatico.ca>; "José Etcheverry" <Jose@davidsuzuki.org>; "Julia Langer" <jlanger@wwfcanada.org>; "Keith Stewart" <KStewart@wwfcanada.org>
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 To: <markw@pembina.org>
 X-OriginalArrivalTime: 08 Jun 2006 13:02:59.0352 (UTC) FILETIME=[DE0DF980:01C68AFB]
 X-AuthenticatedSender: iurquhart@thestar.ca
 X-AntiVirus: Checked for viruses by Gordano's AntiVirus Software
 X-Server: High Performance Mail Server - <http://surgemail.com> r=545410749
 X-Rcpt-To: <markw@pembina.org>
 X-Virus-Scanned: ClamAV 0.87.1/1403/Sun Apr 16 03:44:45 2006 v0.65-7406
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Fyi--iu

 Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: O'Hagan, Anne (ENE)
 To: Urquhart, Ian
 CC: Gillespie, Kerry; Macario, Carmelina (ENERGY)
 Sent: Wed Jun 07 18:29:40 2006
 Subject: RE: EAs and nukes

Ian -- Yesterday, we announced ways to improve the environmental assessment process so it saves time and money. You've read a whole lot more into this piece of rather good news.

If I can clarify at all, great -- here goes.

#1: Theyâ€™re not covered if theyâ€™re not designated. OPG is not an agency of the crown so the EA Act doesnâ€™t apply to its activities as they relate to nuclear. Darlington was a different set of circumstances, a different proponent [a public body], a different electricity regime. From what I understand, apples and oranges.

#2. There's been no determination as yet by the Minister.

#3: Nuclear projects are subject to the fed EA process: the feds then consult with the province. Nothing specific in this package on nuclear.

Weâ€™re consulting on key elements through the EBR: the improvements will be rolled out over the next 4-18 months – you can check the site.

Other thing: your questions pre-suppose a directive that we donâ€™t even have in front of us.

Best,

A

-----Original Message-----

From: Urquhart, Ian [<mailto:iurquhart@thestar.ca>]
Sent: Wednesday, June 07, 2006 12:08 PM
To: O'Hagan, Anne (ENE); Macario, Carmelina (ENERGY)
Cc: Gillespie, Kerry
Subject: EAs and nukes

Yesterday's messaging on nuclear reactors and environmental assessments was, shall we say, confusing. Let me try to clear up the confusion with some questions to both of you:

1. Is the government saying that new nuclear reactors—even those proposed by OPG, a government-owned firm—are not covered by the provincial environmental assessment act? If so, what is the legal authority for this position? The act specifically covers "undertakings" by public sector proponents. Accordingly, in 1977, cabinet had to issue an order-in-council exempting Darlington from coverage. Is it this government's intent to issue similar OinCs for any new reactors coming down the pipeline?

2. Even if new reactors are exempt, either because your reading of the law says so or because cabinet will issue an OinC, surely the IPSP is covered by the environmental assessment act. The act also covers "plans," and the IPSP is certainly a plan. In 1989, a similar plan from Ontario Hydro was subject to extensive EA hearings. So the same questions apply as in (1): is the government saying the IPSP is not covered by the act? If so, what is the legal authority for saying so? If not, does the government plan an OinC to exempt the IPSP from EA hearings?

3. And then there is yesterday's package of proposals from Minister Broten to "enable major infrastructure projects...to proceed more quickly." Does this package cover either nuclear reactors or the IPSP? Is there something in the package that would specifically exempt either or both from EA hearings? It is hard to tell because, to quote Gertrude Stein, "There is no there there." All we have is a press release and a terse backgrounder. Will the content of the proposals be posted somewhere for those of us among the great unwashed to see?

If you can't answer these questions, I would be happy to talk to either or both of your ministers. Or to senior bureaucrats, for that matter.

--iu