

Request for Ruling

In the Matter of Ontario Power Generation's (OPG) request to renew the operating licence for the Pickering Nuclear Generating Station (NGS).

June 25, 2018

THE UNDERSIGNED registered oral intervenors hereby request a ruling pursuant to Rule 20(1) of the *Canadian Nuclear Safety Commission Rules of Procedure*, SOR/2000-211 with respect to the establishment and maintenance of a nuclear emergency preparedness public education program for Greater Toronto Area (GTA) within Pickering's 50 km Ingestion Planning Zone (IPZ).

WHEREAS the Fukushima and Chernobyl disasters demonstrated that reactor accidents may require emergency response measures, including sheltering, the consumption of potassium iodide (KI) and localized evacuations, to protect human health well beyond a 10 km Detailed Planning Zone (DPZ);

WHEREAS the implementation of emergency measures would be particularly logistically challenging considering that over 4 million people live within 50 km of the Pickering nuclear station;

WHEREAS the City of Toronto has requested that "the Canadian Nuclear Safety Commission (CNSC) and the Provincial government to ensure awareness campaigns are in place to inform Torontonians on how to prepare for a nuclear accident at the Pickering or Darlington nuclear stations" (CMD 18-H6.92);

WHEREAS unlike Ontario Power Generation (OPG), Bruce Power has proactively provided a Community Safety Guide, which included information on both general nuclear emergency preparedness and the availability of potassium iodide (KI), to all residents within the 50 km Ingestion Planning Zone (IPZ) surrounding the Bruce nuclear site in 2015; and, moreover, Bruce Power has provided annual updates to the Community Safety Guide to residents of the IPZ by mail (18-H4.66);

WHEREAS the Canadian Environmental Law Association (CELA - 18-H6.57 & 18-H6.57A), Durham Nuclear Awareness (DNA - 18-H6.56), Greenpeace (18-H6.62 & 18-H6.62A) have requested the Commission obligate OPG to proactively inform residents of the GTA on how to prepare for a nuclear emergency, including the availability of KI;

WHEREAS the CNSC's REGDOC-2.10.1 obligates OPG to make KI pills available to all residents within the 50 km IPZ upon request, but contains no associated requirements obligating OPG to inform residents in the IPZ of the availability of KI;

WHEREAS Section 1.7 of the previous Licence Conditions Handbook and G.6 of the draft LCH for Pickering NGS contains additional requirements obligating OPG to establish a nuclear emergency

preparedness information campaign within the 10 km area, but contains no requirements for obligating OPG to proactively inform the Greater Toronto Area (beyond the 10 km Detailed Planning Zone) on nuclear emergency preparedness or the availability of KI;

WHEREAS CELA, Greenpeace and DNA do not feel OPG's supplementary submission (CMD 18-H6.1B) addresses our concerns as it only narrowly details how the company proactively provides information to residents within the 10 km DPZ; and, demonstrates that OPG is not proactively providing information on nuclear emergency preparedness to residents within the 50 km IPZ in a manner equivalent to Bruce Power;

WHEREAS the Commission successfully required OPG to work with the government of Ontario to facilitate the distribution of educational materials and KI pills within the 10 km DPZ in its 2013 decision¹ approving the renewal of OPG's operating licence for the Pickering nuclear station;

WE THEREFORE REQUEST THAT licence conditions G.6 and 10.1 of the draft Licence Control Handbook be amended to require OPG to work with the Government of Ontario to establish and maintain a nuclear emergency preparedness public education program within the 50 km Ingestion Planning Zone; and, put in place the appropriate funding for affected municipalities before the end of 2019.

Reasons in Support of Request

1. The request for ruling does not duplicate interventions

A request for ruling is distinct in procedure and substance from an intervention. While the aforementioned intervenors jointly support and submit this request for ruling to the Commission, we submit it is distinct from our respective interventions for the following reasons.

First, the procedure required for the submission of request for rulings is distinct from interventions. For instance, interventions are submitted and approved pursuant to s 19 of the *Rules*. They require the intervenor have an interest in the matter being heard and provide expertise useful to the Commission in coming to a decision.² Request for rulings, conversely, are intended to assist during a public hearing, and may be made by "a participant...at any time".³

¹ CNSC, "Record of Proceedings, Including Reasons for Decision: Application to Renew the Power Reactor Operating Licence for the Pickering Nuclear Generating Station" (9 August 2013), online: <http://nuclearsafety.gc.ca/eng/the-commission/pdf/2013-05-29-Decision-OPG-Pickering-e-Edocs4177096.pdf>, [CNSC Pickering Decision, 2013]

² *Canadian Nuclear Safety Commission Rules of Procedure*, SOR/2000-211, s 19(1) [CNSC Rules]

³ *Ibid*, s 20(3)

Secondly, requests for rulings are distinct in substance from interventions. While intervenors may provide submissions on areas of concern or expertise, requests for rulings are issue specific and pertain to a matter requiring the Commission's consideration per section 24(4) of the *Nuclear Safety and Control Act (NSCA)*. As this request for ruling responds to material issues raised by CNSC Staff and the licensee in its supplemental submissions, we submit that the doctrine of *res judicata* does not apply.

2. Request for rulings are not limited to procedural considerations

In its Record of Proceeding for the licence renewal of the Pickering NGS in 2013, the Commission noted that while it chose to consider multiple request for rulings received, request for rulings "normally refer to procedural considerations" and "it could be disputed whether some of the requests fall within such an interpretation."⁴ Based on the CNSC's past acceptance of rulings which dealt with substantive matters, and an ordinary reading of the CNSC's *Rules*, we submit requests for rulings are not limited to procedural matters.⁵

The *Rules* frame requests for rulings as a "ruling on a particular issue." Neither the term 'procedure' nor 'procedural' appear in the text of Rule 20. Thus, to limit requests for rulings to procedural matters would be overly restrictive and contrary to the ordinary meaning of the regulation. The interpretation of statutory provisions properly begins with its ordinary meaning and if the Commission wishes to depart or modify the ordinary meaning, it must provide plausible reasons which are sufficiently justified.⁶

In the alternative, if the Commission remains of the view that request for rulings are limited to purely procedural matters, we note the Commission has previously accepted requests substantive in nature and therefore, the present request is not barred from review.⁷

3. The request for ruling is within the scope of the hearing

The lack of nuclear emergency preparedness public education programming extending beyond 10 km from the Pickering NGS is a critical deficiency in licensing not currently remedied by OPG's disclosure and information protocol nor CNSC Staff's proposed licence conditions. One of two enumerated conditions for the issuance of a licence per section 24(4) of the *Nuclear Safety and Control Act* requires that applicants will, in carrying on the activity, make adequate provision for the health and safety of

⁴ CNSC, "Record of Proceedings, Including Reasons for Decision: Application to Renew the Nuclear Power Reactor Operating Licence for the Pickering Nuclear Generating Station" (9 August 2013), para 7 [**CNSC Pickering Decision**]

⁵ See *CNSC Rules*, *supra* note 2, s 20

⁶ Ruth Sullivan, "Sullivan on the Construction of Statutes," 5th ed (Markham: LexisNexis, 2008), p 24

⁷ See for instance: Request for Ruling from CELA to CNSC (August 19, 2015), "File/dossier 6.01.02 – OPG application for 13 year licence renewal at Darlington Nuclear Generating Station"; CNSC Pickering Decision, *supra* note 4; CNSC, "Record of Proceedings, Including Reasons for Decision: Application to Renew the Nuclear Power Reactor Licence for the Darlington Nuclear Generating Station" (2 March 2016), para 210

persons.⁸ As this request for ruling seeks to assist in fulfilling the statutory basis required for licensing and the intent and purposes of REGDOC-2.10.1, this request for ruling is within the scope of the hearing.

First, OPG's public information disclosure and transparency protocol is not sufficient to actively communicate with residents in the 50 km IPZ. While OPG states it will "communicate broadly to residents and stakeholders in facility host communities," it is apparent from its submission to the Commission (CMD 18-H6.1B) that active communication only extends within the 10 km detailed planning zone. For instance, OPG notes its "comprehensive public information program strives to ensure clear understanding of our operations and activities" and it undertakes quarterly newsletter delivery to 120,000 homes. While OPG notes it conducted a public survey in April 2018 gauging the effectiveness of its emergency awareness kits, the survey was limited "within the detailed planning zones for Pickering and Darlington."⁹

Secondly, the effectiveness of the external websites cited by OPG - such as the City of Toronto's emergency preparedness page and that of the Ontario's Office of the Fire Marshall and Emergency Management - as a tool for education and awareness of nuclear emergency response are only effective if the public is aware of their existence and the need for preparedness. While OPG boasts that "an internet search for "KI pills", links appear (such as the KI pills Durham Region and KI pills Toronto) that bring you to the preparetobesafe.ca website to order the pills," and thus emergency preparedness is "easily available to members of the public," it fails to recognize that awareness is a necessary prerequisite to accessing these public information sites.

As the CNSC directed in its Record of Decision for the previous licensing of the Pickering NGS, OPG was to ensure the production and distribution of an emergency management public information document to all houses in the Pickering area. The CNSC's decision rightfully required its production and distribution in order to *actively* inform residents of emergency management information. Unfortunately, a similar onus to actively make residents aware of the aforementioned external websites does not exist beyond the detailed planning zone.

Lastly, the active dissemination of a nuclear emergency preparedness public education program is also necessary given the guidance provided in section 2.3.4. of REGDOC-2.10.1., which states:

To ensure the public have easy access to the required emergency preparedness information, licensees should collaborate with municipalities to provide residents with useful information on how they should prepare, what they should expect and how they should respond to an emergency at the nuclear facility.¹⁰

⁸ *Nuclear Safety and Control Act*, SC 1997, c 9, s 24(4)

⁹ OPG, "CMD 18-H6.1B Supplementary Information - Written Submission from Ontario Power Generation Inc." (12 June 2018), p 5, 25.

¹⁰ CNSC, "REGDOC-2.10.1: Nuclear Emergency Preparedness and Response"

We submit it is necessary that “the public” referenced in the above noted provision include all residents within the 50 km zone. As previously noted, Bruce Power has proactively provided a Community Safety Guide, which included information on both general nuclear emergency preparedness and the availability of KI, to all residents within the 50 km IPZ surrounding the Bruce nuclear site in 2015. And, moreover, Bruce Power has provided annual updates to the Community Safety Guide to residents of the IPZ by mail (18-H4.66).

Therefore, in order to meet, in full, the conditions for licensing required by section 24(4) of the NSCA and the principles stated in REGDOC-2.10.1, this request for ruling recommending that the CNSC require a nuclear emergency preparedness public education program within the 50 km IPZ is within the scope of this proceeding.

4. The request for rulings are not time barred

We submit the request for ruling is not time barred as we have attempted to exhaust other administrative procedures, such as seeking an adjournment of the hearing and seeking disclosure, before commencing these requests for ruling.¹¹

First, by joint letter dated April 3, 2018, CELA and Greenpeace sought a postponement of the relicensing so that public interveners could be provided a fair and meaningful opportunity review the recently released Implementing Plan for Pickering, per the Provincial Nuclear Emergency Response Plan. As our request for the hearing to be deferred was denied, we were thus forced to provide comments for the supplementary deadline. Despite the short timespan for review, we complied with the Commission’s direction and provided our comments on the Implementing Plan’s sufficiency.¹²

Secondly, we actively sought disclosure upon the release of the licensee’s application (CMD 18-H6.1), CNSC’s Staff report (CMD 18-H6), and in response to deficiencies in the record observed following Day 1. This request does not seek to duplicate past information requests, but rather remedy oversights in the record as it relates to the public awareness of residents in the 50 km zone with regards to nuclear emergency preparedness and response.

Lastly, as a matter of procedure, the Commission has previously accepted request for rulings during Part 2 of the hearing process.¹³ Therefore this request is not time barred as it falls within the Commission’s

¹¹ Donald JM Brown and The Honourable John M Evans, “Judicial Review of Administrative Action in Canada,” Vol 2 (Toronto: Thomson Reuters 2017) at 3 - 61.

¹² See CMDs 18-H6.57, 18-H6.57A, 18-H6.62A

¹³ See for instance: Request for Ruling from CELA to CNSC (August 19, 2015), “File/dossier 6.01.02 – OPG application for 13 year licence renewal at Darlington Nuclear Generating Station”; CNSC, “Record of Proceedings, Including Reasons for Decision: Application to Renew the Nuclear Power Reactor Operating Licence for the Pickering Nuclear Generating Station” (9 August 2013), para 7; CNSC, “Record of Proceedings, Including Reasons for Decision: Application to Renew the Nuclear Power Reactor Licence for the Darlington Nuclear Generating Station” (2 March 2016), para 210

previously noted practice. Furthermore, we submit this request prior to the start of the Part 2 hearing to ensure it does not delay or prejudice the hearing process.

All of which is respectfully submitted this 25th day of June, 2018.

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