

GREENPEACE

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Via email: john.smith@ceaa-acee.gc.ca

January 31st, 2006

Dear Mr. Smith,

Re: Elimination of "insignificant" nuclear projects from CEAA

Thank you for this opportunity to comment on the proposed amendments to *Exclusion List Regulations* under the *Canadian Environmental Assessment Act*.

Greenpeace is deeply concerned by these proposed amendments, specifically those dealing with nuclear installations under sections 40 and 41 in Part 4.

The Canadian Environmental Assessment Agency claims that these amendments are aimed to "significantly reduce unnecessary environmental assessments on nuclear facilities." Based on Greenpeace's experience, however, the Responsible Authority for nuclear projects under CEAA, the Canadian Nuclear Safety Commission (CNSC), has consistently acted to avoid environmental assessments on major nuclear construction projects because it deems such projects "unnecessary" and "insignificant."

Take the example of reactor reconstruction or refurbishment projects. All of Canada's nuclear reactors will reach the end of their operational lives over the next 15 years. Nuclear reactor operators will either choose to close and decommission their reactors or spend billions of dollars on projects to rebuild their reactors in an attempt extend their lives.

In spite of this foreseeable trend, the Canadian Nuclear Safety Commission (CNSC) has chosen to establish no guidelines or regulations governing either the ageing or life-extension of nuclear reactors. Worse, CNSC staff has allowed Commission licensees, which view regulatory and environmental assessment obligations as hurdle to be minimized, to establish the regulatory framework that may oversee the largest wave of nuclear construction projects since the 1970s.

When the CNSC received its first letter from a licensee asking to rebuild and extend the life a nuclear reactor (Point Lepreau), CNSC staff informed New Brunswick Power that it "...has no regulatory requirements of policies in place which specifically covers plant refurbishment for the purpose of life extension. The lack of such specific requirements reflects a regulatory risk to your project."

CNSC staff gave New Brunswick Power a choice on how it wished to minimize its "regulatory risk," proposing two options:

1. *CNSC prepares policies and requirements that clearly state in a prescriptive manner what should be done in such situations. Experience has shown, however, that introducing new requirements of this type with the attendant need for extensive consultation with both the industry and the public is not an activity which can be completed in the short term. It seems unlikely that the time required would be consistent with you proposed schedule for decision making.*

2. *New Brunswick Power anticipates CNSC future requirements and voluntarily account for changes which have occurred since original licensing as well as changes which we can see are likely to occur in the future. We suggest that if you decide to follow this approach, one of the key activities would be the early completion of a Periodic Safety Review similar to those carried out in a number of Western Countries and as described in IAEA 50-SG-012, Periodic Safety Review of Operational Nuclear Power Plants. If this were done, we believe that the prospects for regulatory certainty for the whole period of the life extension would be much improved.*

During hearings of the Public Utilities Board of New Brunswick in 2001, Mr. White of New Brunswick Power explained the company's strategy for avoiding a full environmental assessment on the reconstruction on Point Lepreau. Given that the CNSC had no established regulatory guidelines for the reconstruction of a nuclear, Mr. White explained that:

"We proposed to the CNSC in terms of our licensing framework that this work that we were going to do would be treated as a maintenance outage and it would come under the current operating license, and that as such there wouldn't be a requirement for change under that operating license."¹

Despite the complexity of work involved in retubing a CANDU reactor (a major, not insignificant project) such as Point Lepreau, the CNSC staff accepted refurbishment projects as mere "maintenance," thereby avoiding any language which could trigger CEAA.

Greenpeace has consistently contested the licensing assumptions used by the regulator to avoid environmental assessments. Specifically, Greenpeace challenges the CNSC staff's view that "...refurbishment activities that are carried out for the purpose of extending the operational life of a nuclear facility are activities that are considered to fall within the scope of the operating license."²

Again, CNSC staff made a unilateral and unaccountable decision in 2001 when it accepted New Brunswick Power's proposition that retubing activities could be considered a 'refurbishment outage' or 'maintenance' under the operating license.³ CNSC staff did admit, however, that de-fueling and de-watering of the reactor core (which, it is Greenpeace's understanding, typically triggers a licence amendment) would require, at a minimum, modifications to the licensees' Operating Policies and Principals. Specifically, to undertake retubing activities without triggering a licence amendment, CNSC staff told New Brunswick Power that a 'De-fuelled Core State' status must be added to the Operational Policies and Principals.⁴

It is notable that in 2004 (after complaints by interveners), the CNSC asked for a legal opinion from Justice Canada. After receiving the legal opinion, CNSC staff contacted both Hydro-Quebec and Point Lepreau, which were both at the late stages of their environmental reviews, and informed them that they may be required to undertake environmental assessments on the retubing of their reactors (what Greenpeace considers the 'primary project').⁵ In the end, the CNSC used an exclusion list regulation to avoid obligating an environmental assessment on Point Lepreau⁶, but has required Hydro-Quebec to revisit their environmental assessment. The public has therefore been deprived on participating in thorough and transparent environment reviews of these nuclear projects.

Greenpeace has repeatedly asked for clarification and consultation on refurbishment guidelines. The CNSC has refused.

¹ Pg 922, Transcripts of the Public Utilities Board of New Brunswick regarding the proposal for the Refurbishment of its facility at Point Lepreau, 2002.

² CMD 05-H10, *Information and Recommendation of Canadian Nuclear Safety Commission Staff in the Matter of Bruce A Refurbishment for Life Extension and Continued Operations Project*, May 19, 2005

³ P.G. Hawley to R.M. White, "CNSC Staff Position on Activities Related to the Refurbishment of the Point Lepreau Generating Station," December 14, 2001.

⁴ *Ibid*, Pg 8.

⁵ Ian M. Grant (CNSC) to Mr. R. White (New Brunswick Power), "Environmental Assessment of Proposed Refurbishment of Point Lepreau Generating Station", April 1, 2005

⁶ Note that the CNSC held a meeting to amend the scope of the environmental assessment in September, but failed to invite the interveners that had participated in the provincial public consultations on the project that had called for a broader environmental review on the refurbishment project. There has never been a full environmental review on Gentilly-2.

After evaluating the various public statements made by the Canadian Nuclear Safety Commission, New Brunswick Power and Hydro-Québec, Greenpeace can only conclude that the regulator along with its nuclear licensees have colluded to avoid subjecting the reconstruction of Gentilly-2 and Point Lepreau, and Bruce to a full environmental evaluation. The CNSC's lack of transparent regulations concerning the reconstruction of nuclear reactor is allowing nuclear licensees to circumvent CEAA.

It should be noted that the Standing Senate Committee on Energy, the Environment and Natural Resources recommended in 2001:

... that the Comprehensive Study List Regulations of the CEAA be amended to include the restart of a nuclear power reactor following the prolonged shut down of the reactor or significant modification to the reactor and/or the station.⁷

This recommend was never acted on by CEAA or the CNSC. In the meantime, without any oversight, the Responsible Authority has acted to deem large, significant projects, such as refurbishment, in order to evade environmental reviews.

It is in this context that Greenpeace must oppose the proposed amendments to the *Exclusion List Regulations* on nuclear projects. The CNSC needs a shorter leash, not a longer one.

Regarding the specific wording of the proposed amendments, we are concerned about the definition of the word "modification." As noted, the CNSC has consistently used the word "maintenance" to rationalize avoiding environmental assessments on major refurbishment projects. Greenpeace is concerned that the use of the word "modification" would be used to exclude re-tubing or refurbishment work from environmental assessments.

Finally, Greenpeace would request that the Canadian Environmental Assessment Agency examine the aforementioned recommendation of the Standing Senate Committee on Energy, the Environment and Natural Resources. As noted, all of Canada's nuclear reactors will reach the end of their operational lives over the next 15 years. The public interest will only be served if there is a clear and transparent regulatory framework governing the life-extension and ageing of nuclear reactors in Canada.

Because the CNSC has failed to develop transparent, publicly accountable regulations governing the life-extension of Candu reactors, Greenpeace Canada requests that the Canadian Environmental Assessment Agency undertake consultations to develop a more transparent and rigorous regulatory framework for nuclear projects.

Thank you for this opportunity to comment proposed amendments to *Exclusion List Regulations* under the *Canadian Environmental Assessment Act*. If you have any questions, please don't hesitate to contact me.

Truly,



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⁷ The Standing Senate Committee on Energy, the Environment and Natural Resources, "Canada's Nuclear Reactors: How Much Safety is Enough? Interim Report," June 2001, pg. 33.

Theresa McClenaghan

From: <shawn.patrick.stensil@yto.greenpeace.org>
To: "eENERGY VISION GROUP" <energy-vision@list.web.net>
Sent: Wednesday, February 01, 2006 12:47 PM
Attach: GPcommentsonCEAAexclusion31-01-06.pdf
Subject: [Energy-vision] Greenpeace comments on the CEAA modification

HI folks,

As discussed at yesterday's meeting, you'll find attached the rushed comments I put together on the proposed amendments to the Canadian Environmental Assessment Act to exclude certain nuclear projects from environmental review.

The deadline was yesterday, but Theresa thought they'd probably accept comments after the deadline.

Feel free to crib from my comments.

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