

Facsimile Transmittal Form / Formulaire d'acheminement par télécopieur

TO / DESTINATAIRE(S) :

1. Name / Nom : Mr. Eugene Mechan & Lisa Thiele

**Facsimile / Télécopieur : 613-231-3191
613-996-7383**

Telephone / Téléphone :

- As requested / tel que demandé**
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2. Name / Nom : Theresa McClenaghan / Richard Lindgren

Facsimile / Télécopieur : 416-960-9392

Telephone / Téléphone :

- As requested / tel que demandé**
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3. Name / Nom : Mark Madras

Facsimile / Télécopieur : 416-862-7661

Telephone / Téléphone :

- As requested / tel que demandé**
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3. Name / Nom : Ms Kathryn Hucal

Facsimile / Télécopieur : 416-952-4518

Telephone / Téléphone :

- As requested / tel que demandé**
- Left voice message / suite au message vocal**

FROM / EXPÉDITEUR : Lise Lafrance

DATE : June 14, 2011

Telephone / Téléphone : 613-995-5636

TIME / HEURE :

Facsimile / Télécopieur :

**Total number of pages (including this page) /
Nombre de pages (incluant cette page) :**

SUBJECT / OBJET :

On June 9, 2011 Madam Prothonotary Mireille Tabib rendered an order in these matters:
T-361-11 and T-363-11 a previous email with these orders attached have been sent on that date and
requesting a confirmation from your office. I am transmitting here a copy of these orders
If you wish to receive a certified copy by mail. Please do not hesitate to contact me.

BY FAX ONLY

Federal Court



Cour fédérale

Date: 20110609

Docket: T-361-11

Ottawa, Ontario, June 9, 2011

PRESENT: Madam Prothonotary Mireille Tabib

BETWEEN:

**CANADIAN ENVIRONMENTAL LAW
ASSOCIATION AND
SIERRA CLUB OF CANADA**

Applicants

and

**ATTORNEY GENERAL OF CANADA
MINISTER OF TRANSPORT AND
BRUCE POWER INC.**

Respondents

ORDER

UPON the motion of the Canadian Nuclear Safety Commission ("CNSC"), made in writing pursuant to Rule 369 of the *Federal Courts Rules* for an Order that it be granted leave to intervene in these proceedings.

UPON considering the motion record of the CNSC, the consent of the Respondents, the responding motion record of the Applicants and the written representations in reply of the CNSC.

The Court is in general agreement with the arguments set out in paragraphs 15 to 30 of the written representations of the Applicants.

In particular, the Court notes that just because a tribunal wishes to intervene on issues where the intervention of a tribunal has been recognized as permissible or has been permitted in the past does not automatically entitle the tribunal to be granted intervener status. In all cases, the tribunal must satisfy the Court that it otherwise meets the requirements of Rule 109 in the particular circumstances of the case. In this regard, the Court notes the Federal Court of Appeal's comments at paragraph [22] of its decision in *Attorney General of Canada 2010 FCA 246*, as follows:

"22. The tribunal seeking to intervene must assist the Court in its discretionary assessment. The Court must have a fairly detailed description of the submissions that the tribunal proposes to advance and how they will assist the determination of the factual or legal issues in the judicial review. Rule 109(2) requires that this be stated in the notice of motion for intervention. Vague or sweeping descriptions of the intended submissions can create concerns that the tribunal will go too far, prompting the court to impose restrictions. In some cases, the descriptions of the proposed submissions can be so inadequate that the court has no choice but to refuse intervention: *Canada (Attorney General) v. Georgian College of Applied Arts and Technology*, 2003 FCA 123 at paragraphs 5-7, 121 A.C.W.S. (3d) 196."

It is noteworthy that, at the time the CNSC brought its motion, the parties had already exchanged their affidavits and documentary exhibits; yet, although the CNSC specifically seeks leave to file affidavit evidence in this matter, its motion record fails to indicate what facts it would propose to introduce by way of affidavits, on what basis it believes that those facts are not

already contained in the parties' affidavits, and how those facts might be necessary or useful in the determination of the issues before the Court.

Similarly, while the affidavit in support of the motion claims that the CNSC will bring a perspective which will be different from that of the parties, no indication is given as to how the perspective or arguments of the CNSC would differ from that of the Respondents, and more particularly, from that of the Attorney General.

Whereas the CNSC argues that its role and expertise will allow it to provide context to the issues in dispute and to fully explain its process, the CNSC's record fails to provide any indication as to how that context or the details of its process might be relevant or even useful in the determination of the issues before the Court.

Finally, it appears to the Court that the central issue in this application concerns the interpretation of certain provisions of the *Canadian Environmental Assessment Act*. More particularly, at issue is whether the activity proposed to be licensed constituted a "project", as defined in the *Canadian Environmental Assessment Act*, such that an Environmental Assessment was required to be conducted before a license could issue, and whether the proposed activity constituted a modification to a previously approved project, requiring that the Environmental Assessment previously conducted for that project be updated. Those issues were specifically raised by the Applicants before the CNSC, and were addressed, discussed at length and determined by the CNSC in the decision under review in this application. Thus, it is clear that on those issues, the CNSC has already spoken in its decision. In the circumstances, the very

vagueness of the CNSC as to its intended submissions raises concerns that, notwithstanding its undertaking not to make “submissions that, in substance, amend, vary, qualify or supplement the reasons for its decision”, the CNSC might go too far in its submissions. Indeed, because the CNSC has failed to provide sufficient details of the facts and submissions it proposes to advance, and because it is not apparent on the face of the record that there are any relevant facts or submissions that could be made in this matter which do not go to the reasonableness or correctness of the CNSC’s decision and which would not otherwise be made by the Respondents, the Court can not be satisfied that the intervention of the CNSC in this matter would be appropriate.

IT IS ORDERED THAT:

1. The motion of the Canadian Nuclear Safety Commission is dismissed, with costs payable by the Canadian Nuclear Safety Commission to the Applicants, in any event of the cause.

“Mircille Tabib”

Prothonotary

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In particular, the Court notes that just because a tribunal wishes to intervene on issues where the intervention of a tribunal has been recognized as permissible or has been permitted in the past does not automatically entitle the tribunal to be granted intervener status. In all cases, the tribunal must satisfy the Court that it otherwise meets the requirements of Rule 109 in the particular circumstances of the case. In this regard, the Court notes the Federal Court of Appeal's comments at paragraph [22] of its decision in *Attorney General of Canada 2010 FCA 246*, as follows:

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