

AGREE New York
Alliance for a Green Economy



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Secretariat Division
Canadian Nuclear Safety Commission
280 Slater Street
Ottawa, ON K1P 5S9
Delivered via email cns.interventions.ccsn@canada.ca

To the President and Commission Members:

Re: Ten-Year Licence Incongruent with Transparency and Accountability

If approved, Bruce Power's request for a 10-year licence for the Bruce A and B nuclear stations would unacceptably reduce public scrutiny of Bruce Power's operations, weaken meaningful public participation in the proceedings of the Canadian Nuclear Safety Commission (CNSC) and weaken mechanisms needed to keep Bruce Power and CNSC staff accountable to Canadians. For these reasons, we request the Commission to reject Bruce Power's application for a 10-year-long licence.

If granted, it would be the first time a Canadian nuclear facility would be refurbished without undergoing a federal environmental assessment. Bruce Power is also seeking a consolidated licence, which if granted, would merge multiple licences – many of which expire in the next two or three years - and allow their continued operation absent Commission review for a period of ten years.

In our collective view, Bruce Power's request for a 10-year licence is premature. Granting a 10-year licence would allow Bruce Power to undertake actions with a projected operating date to 2064, while being non-compliant with a significant number of regulatory documents and standards at the time of licensing.

Lack of Information

The ability of the public to meaningfully participate in the current hearings has been undermined by absence of key analysis and documents needed to assess the safety of the station and Bruce Power's compliance with existing standards. Without such information it is inappropriate to grant a ten-year licence.

The following documents, as identified in the CNSC Staff's Commission Member Document, have completion dates in the future and will not be available for the Commission or public's review at this hearing:

July 1, 2018	CSA N291-15, Requirements for safety-related structures for CANDU nuclear power plants ⁱ
August 2018	Transition plan to meet the requirements of REGDOC-2.10.1, Nuclear Emergency Preparedness and Response ⁱⁱ
Sept 1, 2018	CSA N289.1-18, General requirements for seismic design and qualification of CANDU nuclear power plants; CSA N289.2-10, Ground motion determination for seismic qualification of CANDU nuclear power plants; CSA N289.3-10, Design procedures for seismic qualification of CANDU nuclear power plants; CSA N289.4-12, Testing procedures for seismic qualification of nuclear power plant structures, systems, and components; CSA N289.5-12, Seismic instrumentation requirements for nuclear power plants and nuclear facilities; CSA N290.12-14, Human factors in design for nuclear power plants; CSA N290.14-07, Qualification of pre-developed software for use in safety-related instrumentation and control applications in nuclear power plants; REGDOC-2.6.1, Maintenance programs for nuclear power plants; REGDOC-2.6.2, Reliability programs for nuclear power plants ⁱⁱⁱ
Dec 31, 2018	CSA Standard N288.5-11, Effluent monitoring programs at Class I nuclear facilities and uranium mines and mills; CSA N288.4-10 (2015), Environmental monitoring programs at Class I nuclear facilities and uranium mines and mills; CSA standard N288.6-12, Environmental risk assessments at Class I nuclear facilities and uranium mines and mills ^{iv}

End 2018	Fisheries Act authorization submission to the DFO ^v
2019	Municipal plans updated in accordance with the Implementing Plans (IP) one year from date IP is published
2019	Revised Emergency Response Plan (3 – 6 months after issuance of IP)
March 29, 2019	CSA N285.7-15, Periodic inspection of CANDU nuclear power plant balance of plant systems and components ^{vi}
June 2019	Full implementation of REGDOC-2.4.2 ^{vii}
Dec 2020	Version 1.1 of REGDOC-2.9.1; Full implementation of cyber security program and compliance with CSA N290.7-14 ^{viii}

Granting a 10-year licence prior to the full implementation of these procedures and actions would result in their review and enforcement being delegated to CNSC Staff. This is not adequate for a public body and Commission members who, as the tribunal's adjudicators, have a duty to act in the public interest and promote the conditions for democratic transparency and effective public participation. This means, that in face of complexity and greater scope, the CNSC's process should be proportionately *more* supportive of public involvement, information sharing and independent expert review.

Our collective experience to date has been the opposite: when Bruce Power last sought to refurbish and extend the operating life of its reactors, the public was provided over 120 days to provide comments, spanning three-separate opportunities for involvement, ranging from consultation on draft environmental assessment reports to review guidelines. Today, the refurbishment is not subject to an EA and thus the public only has a 60-day window to comment on *all* issues before the Commission for relicensing.

Intervenors continue to meet roadblocks when seeking documentary disclosure from Bruce Power. Documents are repeatedly denied by Bruce Power for the reason of being for "internal use only." By failing to compel the licensee to respond differently, the CNSC is complicit in limiting public review and engagement.

Superficial justification for 10-year Licence

CNSC staff justify a 10-year licence on the basis of the new requirement that licencees carry out a Periodic Safety Review (PSR) every ten years. In staff's view, licence renewals should be aligned with the completion of a PSR.

The CNSC, however, did not include in its review of the PSR, any requirements for public oversight or scoping. We do not accept the provision of a finished product, once a decade, as ameliorating the need for ongoing public engagement and oversight.

What's more, the choice of the PSR as determinative of licence renewals overlooked other more regularly produced safety reporting that should inform safety reporting. For example, licencees are required to produce updated safety reports every five years. Updated Probabilistic Risk Assessments (PRA) are also required every five years. Updated PRAs can reveal new understandings of station vulnerabilities and risks. They may also require risk reduction plans.

In this light, we believe a five-year licence timed to updated safety reports and probabilistic risk assessments are more appropriate for monitoring and scrutinizing the safety of nuclear power stations. Such reports identify significant changes in reactor design, analysis and vulnerabilities and are more appropriate, in terms of timing and content, to enable the public and the Commission to carry meaningful scrutiny of licencees and ensure staff and Bruce Power undertake proper risk reduction plans.

Increasing operational complexity incongruent with reduced public oversight

The current licence application is not a simply an operational licence. It seeks permission for Bruce Power to rebuild three reactors over a ten-year period while running aging reactors beyond their design life. Two reactors are scheduled to undergo reconstruction work simultaneously. Such activities are extremely complex and risky. We believe they deserve oversight commensurate to their complexity and risk. However, a ten-year licence would reduce public oversight.

Granting Bruce Power's request to consolidate many licences into a proposed ten-year licence, would move licences which would otherwise be subject to Commission review, to a 10-year process where oversight and enforcement is delegated to CNSC Staff. The exact licences Bruce Power seeks to consolidate and how it seeks to plan for this amalgamation is absent in its application documents. Similarly void is CNSC Staff's analysis and direction on the request.

It is counterintuitive to increase the scope of a licence and contemporaneously decrease the review and scrutiny of its requisite parts. Absent thorough information and a clear rationale demonstrating why licences set to expire in two years should now rollover into a ten year licence, Bruce Power's request to consolidate its licences should be severed from the licence application.

Ten-year Licence means CNSC and Bruce Power less accountable

The CNSC's review of the Fukushima accident did not consider the governance and regulatory issues that lead to disaster. However, Japan's investigation into the disaster found that the root cause of the disaster was government-industry "collusion" and the accident was inherently "man-made". It has been widely acknowledged that "regulatory capture" caused the Fukushima accident. The close relationship between Japan's nuclear regulator and Fukushima's operator created an uncritical and dismissive attitude that caused the Fukushima disaster. Both Japan's nuclear regulator and Fukushima's operator were fully aware of the tsunami risk. Despite this, they did nothing about it.

To learn from Fukushima, we need to prevent - or at least mitigate - regulatory capture at the CNSC. Again, the CNSC's review of the Fukushima disaster only considered the technical causes of the disaster. It did not examine existence of regulatory capture in Japan or how such conditions may exist in the Canadian context.

We believe an approval of a ten-year licence would be antithetical to the lessons from Fukushima. In our view, a ten-year licence would increase conditions where regulatory capture could take root and perpetuate a trend of increased delegation to CNSC Staff – and thereby, an oversight process which operates outside of public purview.

We do not accept staff's assertion that the annual updates provided in the Commission's safety reports are a sufficient replacement for regulatory relicensing hearings. The annual industry safety reports only provide high-level summaries of licensee activities. The information disclosure requirements and practices are inferior and scoped more narrowly, to the information permitted for review in licence renewable hearings. From a procedural perspective, the hearings do not necessarily ensure the public is able to make oral presentations. There is no opportunity to ask questions of staff or licensees. The hearings are also held outside of host communities and the summer means most public intervenors must work over summer holidays.

Conclusions

As a quasi-judicial body, CNSC decisions must transcend the interest of Bruce Power and involve the public interest, at large. Truly excellent regulators must ensure that in making decisions, the public is not only solicited but engaged and the resulting decisions justified.^{ix} For the foregoing reasons, it is incumbent upon the CNSC to not move forward with a *de facto* 10-year licence for Bruce Power.

Yours very truly,

John Jackson
Nuclear Waste Watch

Mike Wilton
Algonquin Eco-Watch

Ziggy Kleinau
Bruce Peninsula Environment Group

Theresa McClenaghan
Canadian Environmental Law Association

Dave Taylor
Concerned Citizens of Manitoba

Don Ross
County Sustainability Group

Janet McNeil
Durham Nuclear Awareness

Shawn-Patrick Stensil
Greenpeace Canada

Brennain Lloyd
Northwatch

Angela Bischoff
Ontario Clean Air Alliance

Fay More
Port Hope Community Health Concerns Committee

Edeltraud Neal
Provincial Council of Women of Ontario

Sheila Nabigon-Howlett
Retired Teachers of Peterborough

Andra Leimanis
Alliance for a Green Economy

Cathy Vakil
Canadian Association of Physicians for the Environment (CAPE)

Derek Coronado
Citizens Environment Alliance of Southwestern Ontario

Jo Hayward-Haines
Council of Canadians, Peterborough/Kawartha Chapter

Elaine Hughes
Council of Canadians, Quill Plains (Wynyard) Chapter

Eugene Bourgeois
Friends of Bruce

Linda Murphy
Inter-Church Uranium Committee Educational Cooperative

Johanna Echlin
Old Fort William Cottagers' Association

Roy Brady
Peterborough Health Coalition

Meg Sears
Prevent Cancer Now

Réal Lalande
Ralliement Contre la Pollution Radioactive

Christine Elwell
Sierra Club Ontario, Green Energy Chair

Marti McFadzean
The Inverhuron Committee

Sandra Cohen-Rose
The National Council of Women of Canada

Louis Bertrand
Zero Waste 4 Zero Burning

cc The Hon. James Carr
Minister of Natural Resources

The Hon. Catherine McKenna
Minister of the Environment and Climate Change

Marc Leblanc
Commission Secretary

ⁱ CNSC Staff, "A Licence Renewal, Bruce Nuclear Generating Station A and B, CMD 18-H4" (14 March 2018), p 85

ⁱⁱ *Ibid*, p 109

ⁱⁱⁱ *Ibid*, p 69 and 85

^{iv} *Ibid*, p 101, 102 and 104

^v *Ibid*, p 135

^{vi} *Ibid*, p 85

^{vii} *Ibid*, p 58

^{viii} *Ibid*, p 100 and 121

^{ix} Daniel Esty, "Lessons from Theory and Practice" in Cary Coglianese, ed, *Achieving Regulatory Excellence* (Washington: Brookings Institution Press, 2017) 12 at p 47