

Minutes of the Canadian Nuclear Safety Commission (CNSC) Meeting held Wednesday, March 23, 2005 beginning at 8:30 a.m. in the Public Hearing Room, CNSC Offices, 280 Slater Street, Ottawa, Ontario.

Present:

L.J. Keen, Chair

C.R. Barnes

J. Dosman

A. Graham

M.J. McDill

M. Taylor

M.A. Leblanc, Secretary

J. Lavoie, General Counsel

C. Taylor, Recording Secretary

CNSC staff advisers were: J. Clarke, B. Howden, P. Thompson and C. David

Other contributors were:

- Canadian Environmental Assessment Agency: P. Bernier
- Canadian Nuclear Association (CNA): S. Coupland and R. Pollock, Co-chair of the CNA Subcommittee

Adoption of the Agenda

1. The revised agenda, CMD 05-M13, was adopted as presented.

Chair and Secretary

2. The President chaired the meeting of the Commission, assisted by M. A. Leblanc, Secretary and C. Taylor, Recording Secretary.

Constitution

3. With the notice of meeting, CMD 05-M12, having been properly given and a quorum of Commission Members being present, the meeting was declared to be properly constituted.
4. Since the meeting of the Commission held February 24, 2005, Commission Member Documents CMD 05-M12 to CMD 05-M14 were distributed to Members. These documents are further detailed in Annex A of these minutes.

Annual report on, and recommendations for improvements to, the CNSC program to fulfill responsibilities under the *Canadian Environmental Assessment Act*

5. With reference to CMD 05-M14, CNSC staff provided the Commission with an Annual Report (2004) on the Canadian Nuclear Safety Commission's (CNSC) program for fulfilling the requirements of the *Canadian Environmental Assessment Act* (the CEAA program). This report included a summary of the status of the environmental assessments (EAs) underway or completed in 2004.
6. The Annual Report also included a review of the program's effectiveness and efficiency, and CNSC staff's recommendations for further improvement of the program. CNSC staff explained that its review of the CEAA program consisted of the following two main activities: 1) an independent consultant's review of the CNSC's application of the CEAA, and 2) the tracking of selected EA projects completed or underway at the CNSC. The review also included a benchmarking of the CNSC's EA screening process with that of the National Energy Board (NEB).
7. The consultant study (by Sussex Circle) included a documentation review and interviews with a number of government, industry and public stakeholders. CNSC staff noted that some of the invited non-government organizations (NGOs) chose not to participate in the study as the CNSC does not provide funding for these efforts. This lack of representation was noted in staff's interpretation of the results.
8. The EA project tracking study was done jointly by the CNSC and Canadian Nuclear Association (CNA).
9. Based on the results of the above-noted reviews, CNSC staff recommended that the Commission accept the following six areas of change / improvement to the CNSC's CEAA Process (as summarized from CMD 05-M14):
 - 1) all EA screening and scoping decisions would be made by the applicable licensing Designated Officer (DO). The DO, upon consideration of specific criteria, could decide to not exercise that authority, thereby elevating the decision to the Commission for decision;
 - 2) the above-noted DOs would be at the level of Director General (D.G.) and they would receive relevant training in the application of the CEAA;

- 3) CNSC staff would revise the CNSC Guidelines on CEAA to include:
 - a. guidance for project proponents on what levels of information they need to produce and the degree of public consultations they must carry out during an EA process, commensurate with the level and risk and complexity of the project;
 - b. revised templates for preparing project specific EA Guidelines with either a low or high potential for causing adverse environmental effects;
 - c. details on how CNSC staff will fulfill its role when it is identified as the federal EA coordinator; and
 - d. all criteria and process requirements for conducting EA screenings at the CNSC.

 - 4) include in the CNSC program guidelines, the following CNSC-led public consultation opportunities during all EA screening processes:
 - a. the public would be provided an opportunity to comment on all draft project-specific guidelines; and
 - b. CNSC staff would consult in the project area with the public on EA Screening Reports where the CNSC has determined that public interest would warrant an interactive consultative process.

 - 5) CNSC staff would attend major public consultations held by the project proponents, while making provisions to maintain the clear separation and independence of the CNSC as the regulator; and

 - 6) CNSC staff would undertake and maintain a number of communications, outreach, guidance and training activities aimed at CNSC staff, industry, public and other government departments.
10. In supporting its recommendations, CNSC staff explained how, in its view, the changes and improvements would facilitate its systems approach to environmental management that is being implemented at the CNSC.
11. The Commission sought assurances that the proposed modified program would continue to fully meet the requirements of the CEAA. In response, P. Bernier of the Canadian Environmental Assessment Agency (CEA Agency) stated that the modified program recommended by CNSC staff would meet and, in the case of the proposed provisions for public consultation, exceed the

- requirements of CEEA.
12. The Commission asked CNSC staff and the CNA representatives present at the meeting to elaborate on the benefits of the proposed modifications. In response, both parties stated that the modifications would improve the program efficiency, resulting in a shorter EA screening period while assuring appropriate consultations.
 13. The Commission, noting that the proposed delegation of EA decision-making to CNSC staff could result in fewer EA decisions coming before the Commission at public hearings, sought assurances from staff on how the transparency of the process and decision making would be preserved. In response, CNSC staff stated that public consultation and the creation of an evergreen list of documents associated with the screening activities, including records of meetings and reasons for decision would assure an open and transparent process. CNSC staff added that the proposed process would parallel the Commission's rigorous process to demonstrate an independent decision was taken after consideration of all stakeholder views.
 14. In response to follow-up questions from the Commission on the planned CNSC-led public consultations, CNSC staff stated that stakeholder program awareness would be part of the on-going CNSC outreach activities and would allow for early public involvement in the process. CNSC staff also noted that the proposed increase in the presence of CNSC staff and DOs in the potentially affected communities during an EA (i.e., at either or both CNSC-led and proponent-led consultation events), would provide enhanced public accessibility to the EA decision-maker. CNSC staff further noted that where a project licence application is ultimately to come before the Commission for licensing approval, the EA scoping and screening results would be presented to the Commission during the licensing public hearing, at which point the public could continue to intervene on matters relevant to the EA findings and protection of the environment.
 15. In response to the Commission's questions on the issue of avoiding what CNSC staff referred to in its report as potential "consultation fatigue", CNSC staff noted that, in addition to providing fewer, but more timely, personal and effective consultation opportunities, CNSC staff plans to explore the possibility of more active communications and consultations with umbrella groups such as the Canadian Environmental Network to help maximize efficiency and effectiveness in getting some stakeholders' views.

16. The Commission requested information on the resources needed to manage the proposed program. CNSC staff indicated the need for additional resources and added that resources previously used to prepare for public hearings of the Commission on the environmental scoping and screening would be used to administer the program.
17. In examining the proposed policy that would have CNSC staff decide to either administer the process or elevate it to the Commission, the Commission requested further details on the criteria to be used to make such a decision. Referring to CMD 05-M14, CNSC staff listed two examples of criteria that the DO would apply in deciding to elevate the decision to the Commission:
 - 1) when the DO determines that a decision to refer the project for panel review may be warranted; and
 - 2) when the DO believes there is a high likelihood of significant adverse environmental effects that cannot be mitigated.
18. Upon further questioning by the Commission, CNSC staff assured the Commission that the DO would exercise due diligence when applying the criteria. CNSC staff added that the process, for the purpose of transparency, would also allow stakeholders to request that the Commission make the scoping and screening decisions for a specific EA. CNSC staff explained that the revised CNSC Guidelines on CEAA would include procedures for making such requests to the Commission.
19. The Members requested that CNSC staff elaborate on the use of the EA as a planning tool. CNSC staff explained that making an EA decision prior to the licence application coming before the CNSC for decision (i.e., rather than having the EA and licensing decisions considered at the same time, or a proceedings held on the same dates) allows for more informed decision-making. CNSC staff added that this sequential, rather than parallel approach to EAs and licensing has been a CNSC policy decision.
20. The Members sought clarification on how panel reviews would be conducted in the proposed modified program. CNSC staff clarified that the proposed program changes would not affect the criteria for recommending a panel review. CNSC staff suggested, however, that earlier involvement with the CEA Agency would improve efficiency when a panel review is needed or being considered. CNSC staff noted the possibility of developing a Memorandum of Understanding with the CEA Agency to outline a cooperative approach for a panel review assessment which could include the

use of the existing CNSC Commission Members in a manner similar to that which has been used at the National Energy Board.

21. In response to stakeholders' concern regarding the delegation of the preparation of EA studies to proponents, the Commission sought further clarification. CNSC staff responded that this delegation is current practice permitted under CEAA. P. Bernier, Vice-President of the CEA Agency, confirmed the acceptability and common use of this practice and pointed out that the responsible authority, in this case CNSC, is responsible for reviewing and approving the proponent studies.
22. The Commission sought further information on using a risk-informed approach to the EAs. CNSC staff confirmed that a risk-informed approach is used when performing EAs, citing that an EA performed for a proposed modification to an already licensed facility would often necessitate less technical work due to availability of monitoring data, past performance and minimal difference in the environmental impact of the proposed project from the existing licensed activity. CNSC staff noted the majority of the screening reports and comprehensive studies performed by the CNSC have been for existing licensees.
23. The Members thanked the CNSC staff for its recommendations and report and noted that the Commission would deliberate further on the matter prior to either requesting additional information or announcing its decisions on the recommendations of CNSC staff.

Closure of the Public Meeting

The public portion of the meeting closed at 12:40 p.m.

24. The Commission deliberated on the annual report of staff on the implementation of the revised CEAA program, including the six recommendations of staff summarized above in paragraph 9 of these meeting minutes and made the following decisions:

DECISION

- 1) The Commission accepts the CNSC staff's 2004 annual report on the implementation of the CEAA program and asks that staff continue to prepare annual reports on this topic to be submitted at future public meetings of the Commission.
- 2) The Commission welcomes the work of CNSC staff relating to the review of the CEAA approach and the benchmarking conducted in support of its review.
- 3) The Commission also welcomes the work by CNSC staff on the

CNSC systems approach to environmental management and believes it will significantly contribute to the effectiveness and efficiency of the application of both the *Canadian Environmental Assessment Act* and the *Nuclear Safety and Control Act* (NSCA) by the CNSC. As such, the Commission asked the CNSC staff to move expeditiously to implement this systems approach to environmental management and to update the Commission as appropriate.

- 4) Regarding the specific recommendations, the Commission does not accept the CNSC staff recommendation to delegate to CNSC staff the making of certain decisions under the CEAA as proposed in CMD 05-M14. The Commission is of the view, after close review of the NSCA and CEAA, that the authority that makes a licensing decision is the proper authority to make the EA screening-level decisions. The Commission has taken the decision that, pursuant to both CEAA and NSCA requirements, where the Commission is the licensing authority and has not authorized the DO to make the licensing decision pursuant to section 37 of the NSCA, the Commission should make all associated decisions on the scope (i.e., EA Guidelines) and results of EA screenings; that is, on all decisions pursuant to section 15, subsection 16(3) and 20 of the CEAA. The Commission reconfirms that where the Commission has authorized the DO to make the licensing decision pursuant to section 37 of the NSCA, the DO should continue to make the associated decisions pursuant to these sections of the CEAA.
- 5) However, the Commission does accept the views expressed by CNSC staff that there is an opportunity, in the context of this review, to improve the efficiency and effectiveness of the EA process. The Commission has considered alternative processes available to it for the purpose of improving the effectiveness and efficiency of the Commission's decision-making process for EA Guidelines and Screening Reports, including a more risk-informed use of public hearings to consider EA Guidelines and EA Screening Reports. The Commission has determined that, while it will make the decisions to approve or not EA Guidelines where it is the licensing authority, it will no longer conduct public hearings on the matter of EA Guidelines. Instead, it will make decisions in the context of meetings of the Commission. In addition, the Commission will also determine, as part of its decision regarding the EA Guidelines, the process to be followed with respect to the EA Screening Report, including whether the EA Screening Report will be reviewed in the context of a meeting or a public hearing of the Commission. The Commission is of the view that this decision recognizes the

clear lines of authority that exist and the consultations already conducted by staff on the draft EA Guidelines and EA Screening Report where submissions from interested parties are fully dispositioned, while streamlining the EA process where appropriate.

- 6) Because the Commission does not accept the CNSC staff recommendation on delegation of decision-making under the CEAA, recommendation 2 set out in CMD 05-M14 on the identification of DOs by position is no longer relevant. The Commission, however, accepts the recommendation that those DOs who act as responsible authorities under the CEAA be provided with the relevant training on the CEAA in a timely manner.
- 7) The Commission accepts the recommendation that the CNSC Guidelines on the CEAA be revised as proposed by CNSC staff in CMD 05-M14.
- 8) The Commission accepts the CNSC staff recommendations with respect to the opportunities for, and the conduct of, CNSC-led public consultations during the EA process.
- 9) The Commission accepts the CNSC staff recommendations set out in CMD 05-M14 with respect to CNSC staff attendance at major public consultation events held by proponents.
- 10) The Commission accepts the CNSC staff's recommendations set out in CMD 05-M14 with respect to various initiatives and improvements in communications, guidance and training for both internal and external parties involved in CNSC EAs.

Chair

Recording Secretary

Secretary

ANNEX A

CMD	DATE	File No
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05-M12	2005-02-21	(1-3-1-5)
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Notice of meeting held on Wednesday, March 23, 2005 in Ottawa

05-M13	2005-03-07	(1-3-1-5)
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Agenda of the meeting of the Canadian Nuclear Safety Commission (CNSC) held in the public hearing room, 14th floor, 280 Slater Street, Ottawa, Ontario, on Wednesday, March 23, 2005

05-M14	2005-03-04	(1-3-1-5)
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Recommendations for improvements to the CNSC Program to fulfill responsibilities under the *Canadian Environmental Assessment Act*