



CHIEFS AND COUNCILS
SAUGEEN OJIBWAY NATION
ENVIRONMENT OFFICE

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BY EMAIL

February 7, 2008.

Dr. Patsy Thompson, Ph.D,
Director General,
Directorate of Environmental and Radiation Protection and Assessment,
Canadian Nuclear Safety Commission,
Ottawa.

Dear Dr. Thompson,

**Re Panel review processes for nuclear DGR and New Build proposals for
Bruce Nuclear site at Douglas Point.**

Thank you for your January 21 letter, which enclosed the current CNSC-CEAA drafts of Agreements to establish the review panel processes for the two nuclear proposals referred to above. We appreciate your agreement to consult with the Saugeen Ojibway Nations (SON) about these drafts, before releasing them for public comment.

We have substantial concerns about these draft agreements. We are writing to explain our concerns and suggest how they might be addressed. We hope that will help prepare for a productive meeting of CNSC, CEAA and SON on February 11-12.

As you know from SON's submissions to the CNSC hearing in Kincardine on October 23, 2006, and the discussions in our Ottawa meeting on July 16-17, 2007, our concerns are based on the fact that both these nuclear proposals threaten very substantial adverse impacts on SON's Aboriginal and Treaty rights and related interests.

These projects will not be acceptable from SON's perspective until we have a high degree of certainty that harm to our rights and interests will be avoided over many hundreds of years. Our communities will not believe that these projects are safe for our territory and future generations unless that is the conclusion reached by credible, independent and thorough investigations that address all the issues about the various risks posed by the two proposals, and consider whether those can be effectively mitigated. We proposed panel reviews for both proposals because those could be robust and independent investigations to be conducted in public with our full participation.

These panel reviews should be created in the context of the federal government's duties to SON based on the honour of the Crown, as well as the statutory duties for which CNSC and CEAA are responsible. We say that because there is no doubt that the proponents' applications for these projects trigger a federal government duty to consult

with SON, and that the required consultations will need to develop significant accommodation measures to protect our Aboriginal and Treaty rights and interests.

In light of the very serious and long-term risks posed by these projects for the future of our communities, territory and way of life, SON could only feel that our concerns are addressed if the required consultations are conducted on the basis of information that **both** consulting parties consider complete and reliable.

We have therefore agreed to work with you to design these panel reviews as the primary mechanism to develop the information required for those consultations. This needs to be reflected in the agreements to establish the reviews - in the purposes for the reviews, as well as in the membership of the panels and their terms of reference and procedures.

The draft agreements you sent us seem primarily designed to harmonize the CEEA process with CNSC's licensing functions. We are troubled by that. It is more important, at this stage, to harmonize the CEEA process with the duty to consult. The review panels should do their work and produce their reports, and consultations should take place, before any licensing processes begin.

If the environmental assessment and licensing processes are being undertaken at the same time and by the same people, the panel review may be tainted by a suspicion of a predisposition in favour of granting a license for the projects. That would undermine the credibility of the panel review process and the use of its reports as a basis for consultations.

We also think that a plan to conduct the CEEA function jointly with CNSC licensing procedures would be at odds with the principles reflected in sections 4(1)(a), 5(1), 11(1), 16 and 37(1) of the *Canadian Environmental Assessment Act*. Furthermore we note that CNSC proposed to conduct a substitute environmental assessment pursuant to section 43, but this was not accepted.

On the other hand, we have always agreed that CNSC should have a full involvement in the creation and work of the panel reviews, including the appointment of two commissioners as members of the panels. In our view that involvement would promote the highest standard of evidence and inquiry through the environmental assessment.

We are including a series of proposals to modify the draft agreements you sent us. We have tried to address the major concerns that we have with the current drafts. Once we find a way to resolve those together, there will be some further legal-technical drafting issues to work out. We look forward to our meeting on February 11-12.

Miigwitch,

Chief Ralph Akiwenzie

Chief Randall Kahgee

SON Proposals re Draft Agreements

Re Preamble: The following to be added:

WHEREAS the Project is within the traditional territory of the Saugeen Ojibway Nations (SON).

WHEREAS the Project may cause adverse impacts to SON Aboriginal and Treaty rights, and the application for the Project therefore triggers a Crown duty to consult and accommodate.

WHEREAS SON and the Parties to this Agreement have agreed that a review of the Project by a joint review panel will be a primary mechanism to develop the information required for meaningful consultations respecting the Project.

WHEREAS SON intends to participate fully in the joint panel review of the Project.

Re Constitution of the Joint Review Panel: We propose the following nomination and appointment structure to replace section 3.1 in the current draft:

The Joint Review Panel will consist of five members. Panel members, including the Chair, will be appointed by the Minister of the Environment.

Two members will be appointed from members of the Commission nominated by the Commission, and two members will be appointed by persons nominated by SON. CEAA, the Commission and SON will consult each other prior to the submission of nominations.

The Chair will be appointed from persons nominated jointly by CEAA, the Commission and SON.

Procedural Suggestions:

- References to *CNSC Rules of Procedure* and the *NCSA* should be removed.
- The Panel should conduct its review in accordance with the *Procedures for an Assessment by a Review Panel, November 1997* (the Guidelines). This should be stated in the Terms of Reference, as required by s. 4.4.4 of the Guidelines.
- The Secretariat will provide information and materials to the Joint Review Panel when requested to do so by the Panel. Such information and materials will be put on the record.
- In addition to the functions performed by the Secretariat, the Panel may secure the services of independent experts, with respect to issues requiring technical, scientific or traditional knowledge.

- The Panel will carry out a comprehensive scoping exercise, including scoping meetings, as contemplated in section 4.8 of the Guidelines. As part of the scoping exercise, the Panel will invite recommendations on the conduct of the panel review, including its hearings.
- After the conclusion of the scoping exercise, the Panel will schedule hearings in accordance with section 4.17 of the Guidelines. Hearings will be held in the SON communities where appropriate.
- SON may participate in all phases of the panel review including the scoping exercise and hearings, and may present or question evidence and make submissions on relevant matters.

Scope of Environmental Assessment and Factors to be Considered: We propose that the following be added to the list of factors to be considered:

- SON concerns relating to impacts of the Project on their Aboriginal and Treaty rights and interests, and corresponding accommodation measures.
- Contingency and Emergency Response Plans
- Security-related issues
- Responsibilities and liability of the Proponents respecting accidents, malfunctions, decommissioning and reclamation.
- Stability of regulatory and other institutional arrangements for management of the Project and environmental protection over the very long term.
- Adaptive management concepts in the design and implementation of the Project.

March 20, 2008

Consultation Plan with the Chippewas of Nawash and Chippewas of Saugeen (SON)

For the Environmental Assessment of OPG's Proposed Deep Geologic Repository and Bruce Power's New Nuclear Power Plant Project within the Municipality of Kincardine, Ontario

1. Finalization of the Joint Review Panel Agreements

- a) The duration of the public review period of the draft JRP Agreements shall be 75 days.
- b) At the close of the public review period for the draft JRP Agreements the SON may provide their views on the draft JRP Agreements in writing.
- c) The Agency and the Commission will consider any such views so presented by the SON. The Agency and the Commission will provide the SON with its written consideration of the SON views before the Joint Review Panel Agreements are finalized.

2. Finalization of the Environmental Impact Statement Guidelines

- a) The Agency and the Commission will provide the SON with draft EIS Guidelines 7 days prior to issuing them for public review
- b) The public review period for the draft EIS Guidelines shall be 75 days. During the public review period Agency and Commission staff will hold public meeting(s) in the Kincardine area and in the SON communities if so requested by the SON to provide interested parties an opportunity to receive information and ask questions on the draft EIS guidelines
- c) At the close of the public review period for the draft EIS Guidelines, the SON may submit its views on the draft EIS Guidelines in writing to the Agency and the Commission
- d) The Agency and Commission will consider any such views so presented by the SON. The Agency and Commission will provide the SON with its written consideration of the SON views before the EIS Guidelines are finalized.
- e) The Agency and the Commission agree to meet with the SON if appropriate in an effort to resolve any outstanding SON concerns with respect to the draft EIS Guidelines.
- f) The SON may submit detailed information relating to what the SON see as the possible impacts of the above-referenced projects on their rights and title by the close of the 75-day public review period for the draft Environmental Impact Statement guidelines for these projects. The Agency and the Commission agree to meet with the SON if appropriate to clarify any questions related to what the SON see as the possible impacts of the above-referenced projects on their rights and title.

3. Conduct of the Review

- a) The Environmental Assessment shall be conducted in accordance with the Joint Review Panel Agreements' Terms of Reference
- b) The Joint Review Panel shall ensure that
 - i) the hearings afford an opportunity for the SON and other interested parties to present their views about the potential Environmental Effects of the Project
 - ii) the technical issues are fully examined in technical hearings scheduled to consider specific matters of concern
 - iii) ensure that Aboriginal and traditional knowledge is appropriately considered during the public hearing process

4. Consultation on receipt of Joint Review Panel Report

- a) Within 30 days following the public release of the Joint Review Panel Report, and prior to the Government taking any decision or Course of Action which would enable the Projects to proceed, the SON may prepare its views on the Joint Review Panel Report and submit those views in writing to the Minister of Environment.
- b) The Government will consider any such views so presented by the SON. If needed, a meeting between the Government and the SON will occur with respect to the JRP Report.

5. Consultation during the regulatory approvals phase

The federal Crown shall consult with the SON on regulatory decisions necessary for the project to proceed on aspects of the project that the Environmental Assessment Joint Review Panel has determined to have potential adverse impact on the rights and title of the SON, that can not be mitigated.