

June 20, 2019

Marc Leblanc, Commission Secretary
Canadian Nuclear Safety Commission
280 Slater Street
Ottawa, ON K1P 5S9

Delivered via email Marc.Leblanc@canada.ca

Re: Notice of Hearing, June 12, 2019 for the SLOWPOKE-2 Facility (Ref. 2019-H-100)

Dear Mr. Leblanc:

The Canadian Environmental Law Association (“CELA”) sends this letter on its own behalf and that of Northwatch, the Inter-Church Uranium Committee Educational Cooperative and the Concerned Citizens of Renfrew County and Area. We respectfully request your immediate attention to the Notice of Hearing in Writing (Ref. 2019-H-100) released June 12, 2019 (herein “Notice”).

As per the Notice, the Canadian Nuclear Safety Commission (“CNSC”) has specified that requests to intervene must be filed with the Commission Secretariat by June 25, 2019.¹ For the reasons set out below, we oppose the CNSC’s decision to provide only 13 days for preparation and filing of materials and to hold the hearing in writing, absent any provision of participant funding.

We request the CNSC grant an extension of time so that the public has at least 60 days for filing of interventions. We also request that an in-person public hearing be held, accompanied with participant funding to facilitate the public’s full and fair involvement, in regard to the application from the Saskatchewan Research Council to amend the operating licence of the SLOWPOKE-2 reactor to a decommissioning licence.

I. Adequate Notice and Fairness

We submit that the CNSC has failed to give adequate notice, thus jeopardizing the validity of any decision made in regard to this matter, and has additionally breached the *Canadian Nuclear Safety Commission Rules of Procedure* (herein “Rules”).² While the CNSC relies on Rule 3 of the *Canadian Nuclear Safety Commission Rules of Procedure* to vary its process, this variation is only permitted when it is fair to do so.

¹ Canadian Nuclear Safety Commission, “Notice of Hearing in Writing” (12 June 2019), online: <http://www.nuclearsafety.gc.ca/eng/the-commission/pdf/NoticeHearingSRC-19-H100-e.pdf>

² Sara Blake, *Administrative Law in Canada*, 6th ed (Toronto: Lexis Nexis, 2017) at 21 [Blake]

Varying Rules

3 (1) The Commission or, where applicable, a designated officer may vary or supplement any of these Rules, in order to ensure that a proceeding be dealt with as informally and expeditiously as the circumstances and the considerations of fairness permit.

(2) Any procedural matter that arises in the course of a proceeding that is not provided for in these Rules shall be dealt with by the Commission or, where applicable, a designated officer as informally and expeditiously as the circumstances and the considerations of fairness permit [emphasis added]³

Accordingly, Rule 3 can only be relied upon when “considerations of fairness” permit a variance in otherwise prescribed Rules.

First, the timeliness of the notice has not been sufficient. Enough time must elapse between the provision of notice and commencement of the hearing, so that interested individuals and the public have sufficient time to prepare.

Thirteen days does not provide enough time for intervenors to review materials and prepare a response, especially as the materials are not immediately available online and must be requested. While we have requested the documents referenced in the CMDs, we are awaiting a response which delays our ability to review and respond accordingly. Further, since this is a complex matter which poses unique challenges by virtue of being a research reactor, more time is required.⁴ All of these considerations gravitate in favour of granting an extension.

Secondly, as this particular matter – by virtue of being a licensing matter under *Nuclear Safety and Control Act* - has as one of its purposes the protection of public safety, the public interest must be paramount to the procedural rights of the licensee.⁵ Thus, the hearing should not proceed within such a constrained period of time.

Third, fairness requires consistency in procedure. The CNSC continuously imparts the message that the public is engaged and consulted in its decision-making processes⁶ and that public participation is “encouraged in all licensing decisions”.⁷ This gives rise to a legitimate expectation that the public is able

³ *Canadian Nuclear Safety Commission Rules of Procedure* (SOR/2000-211), s 3 [CNSC Rules]

⁴ Blake at 36

⁵ *Ibid*, at 22

⁶ See for instance “Remarks by President Velshi at the Office for Nuclear Regulation Annual Industry Conference (5 June 2019),” online <http://nuclearsafety.gc.ca/eng/resources/presentations/president-velshi-remarks-office-nuclear-regulation-annual-industry-conference.cfm> where President Velshi stated:

“First, as regulators, we need to be as transparent and open as possible. In a time of rapid change, it is more essential than ever that people have as much information as possible – and that this information can be easily understood. People want to know what is happening in the industry, and they want to be assured that we are working with skill and dedication to ensure public safety. In Canada, our decision-making commission holds public hearings and meetings that welcome public participation. These sessions are broadcast over the Internet.”

⁷ RegDoc 3.5.1 *Licensing Process for Class I Nuclear Facilities and Uranium Mines and Mills* (Version 2), s 3.2

to fully and adequately respond to a licence application before it proceeds to the CNSC for final deliberation. As a quasi-judicial tribunal, it is reasonably expected that the CNSC would follow its licensing process and process for involving the public as set out in RegDoc 3.5.1 *Licensing Process for Class I Nuclear Facilities and Uranium Mines and Mills* (Version 2) and its Rules (which set out a minimum 60 day notice period).⁸ Acting contrary to this legitimate expectation, as evidenced by the Notice, is a breach of fairness.

Fourthly, fairness requires that parties be informed of the case to be met. However, as the Notice only provides 13 days to request information, review their contents and prepare a submission, the public cannot attain a sufficient knowledge of the matter at issue in order to adequately respond. The CNSC cannot reasonably expect the public to effectively exercise its right to be heard within a 13 day window and thus it would be unfair to proceed.

II. Hearing in Public

It is a basic principle of administrative law that all hearings be held in the public, unless there is express statutory authority to exclude the public.⁹ Public hearings advance public trust in the proceedings, safeguard against covert dealings beyond public view, and align with the CNSC's priority of being a transparent regulator.¹⁰

Additionally, an in-person hearing would provide the opportunity to more openly discuss the lessons learned from experience to date (for example, the decommissioning of the University of Toronto's SLOWPOKE reactor) and the unique challenges posed in decommissioning a research reactor.¹¹

Therefore, we request the matter be referred to a full, in-person public hearing rather than reviewed in writing. This is a matter of significant public importance, and particularly precedential to future CNSC deliberations on reactor decommissioning and end of life operations.

III. Requested Action

For the foregoing reasons, we respectfully request the CNSC reissue its Notice, provide a minimum 60-days for review and hold an in-person public hearing.

Thank you for your consideration of this matter. Given the time sensitive nature of our request, we would appreciate a prompt response.

⁸ CNSC Rules, s 17(3)

⁹ Blake at 89; *Vancouver (City) v BC (Assessment Appeal Board)*, [1996] BCJ No. 1062 (BCCA)

¹⁰ Final Report of the Expert Panel for the Review of Environmental Assessment Processes (2017); Blake at 89; Lisa Thiele, "Some Nuclear Law Developments – CNSC – 2019" (14 June 2019) Canadian Nuclear Law Organization

¹¹ See CNSC, CMD 11-H122.

Truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read "Kerrie Blaise".

Kerrie Blaise
Legal Counsel

cc.

Brennain Lloyd, Northwatch
Michael Poellet, Inter-Church Uranium Committee Educational Cooperative
Ole Hendrickson, Concerned Citizens of Renfrew County and Area
Michael Rinker, Canadian Nuclear Safety Commission