



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT



GREENPEACE

December 22, 2010

Mr. Alan Graham, Chair
Darlington New Nuclear Power Plant Project
Joint Review Panel
Place Bell Canada
160 Elgin St., 22nd Floor
OTTAWA, ON K1A 0H3

Via electronic and regular mail

Re: Darlington New Nuclear Power Plant Project

Dear Mr. Graham, Ms. Beaudet, and Mr. Pereira:

Further to our letter of August 9, 2010, and in light of your recent release of the Notice of Public Hearing and Public Hearing Procedures, we write jointly on behalf of the following groups: Canadian Environmental Law Association, Lake Ontario Waterkeeper, Mouvement Vert Mauricie, Northwatch, Safe and Green Energy, and Greenpeace.

We write to firstly request an extension of the January 13, 2011 deadline provided by the Panel for registration by Intervenor. (Participants are dealt with in our third point below.) This is an extremely limited amount of time given that the Panel has released this notice just prior to the holiday period, and the deadline will occur just after the holiday period. In particular, this is of concern for all of those individuals and groups who may have been planning to intervene in the hearing beyond those who have been granted funding. Broad public intervention and participation is an extremely important element of this hearing and in our submission the artificial constraint of the time frame overlapping late December and early January should not prejudice people's opportunity to obtain the information they need, and to register. We would ask that the registration deadline be extended to January 31, 2011.

Secondly, we write to request an extension of the time for Intervenor to provide written submissions to the Panel. We request that this deadline be *at least* 30 days after the proponent's and government's submissions are filed. We would also note that we reserve the right to request a further extension depending on the volume of material filed by the proponents and governments in their final submissions; we have no insight at this time as to what that might consist of. The current schedule set by the Panel provides two weeks from the receipt of the Proponents and government's final

submissions and this time frame is entirely inadequate even for the funded Intervenor who are already engaged in the process as they and their experts will have to review those submissions, determine any additions or changes to their own materials, have those reviewed by the Intervenor and their experts, and then filed.

Thirdly, we request that the deadline for registration by Participants (who would be providing oral submissions only) be extended to no earlier than 10 days before the start of the Hearing. As this category of participation includes members of the general community and others, a process to best ensure opportunities for interested members of the public to participate and express their views is key. This should not be cut short due to an abbreviated registration time line, and one which many members of the public may not realize exists until closer to the hearing date.

Fourthly, we assume that the Funded Intervenor and their Experts may all be registered as Intervenor and thus will have the opportunity to EACH make a written submission and a thirty minute presentation.

We have also reviewed our letter of August 9, 2010, to determine which matters have been addressed by the Panel to date, and which remain outstanding. We repeat the following submissions as to the manner of the Panel's public hearing regarding the Darlington New Build Environmental Assessment. As before, these submissions have been discussed and agreed to by the Participants named below. We are of the view that these provisions are necessary to ensure a fair hearing with equitable access for those wishing to participate; to ensure that the Joint Panel has the best possible evidence and information on which to base its decision in the matter; and to ensure transparency in the proceeding.

1. Disclosure of all responses to Information Requests before the close of comments to the public;

While responses to date have been made public, we note that by letter to Mr. Albert Sweetman dated December 14th, the same date as the Hearing notice, Mr Graham advised that the panel requires responses in four outstanding areas. Accordingly, this information has not yet of course been provided to the public.

2. Right of members of the public to request standing as Participants in the hearing, regardless of whether or not those members or organizations have been funded by the Funding Panel;

This request has been included in the Panel's directions.

3. Right of Participants to make opening and closing oral and written submissions and to reply to closing submissions of other parties / participants;

This request has been included in respect of the beginning of the hearing, but there is no indication yet as to a right of reply and we request that this be provided by the Panel to the Intervenor.

4. Requirement for proponent to address in its evidence all "worst case" scenarios in the proposed design, construction and operation of the nuclear generating station;

This remains a critical issue.

5. Allocation of at least 90 days after final presentation of any evidence in the hearing in order to make final submissions;

As noted this is not yet addressed by the Panel and we repeat this request.

6. Requirement for those presenting evidence on the part of the applicant / proponent to be under oath;

We repeat this request.

7. Right of Participants to cross-examine the applicant / proponent and CNSC staff on evidence and information provided by them to the Joint Panel;

Even in a public interest hearing, this is normal process in other proceedings and tribunals. We repeat this request.

8. Right of Participants to ask questions of others presenting evidence and information;

This has been addressed in the Panel's hearing notice.

9. Ability of Participants to submit list of witnesses to be called by the Joint Panel and topics regarding same; including the right of participants to request the Joint Panel to summon government witnesses;

While the ability to summons witnesses is included in the Panel's hearing notice, and while nothing would preclude the Intervenors from making suggestions to the Panel in this regard, we would request that this be explicitly included in the Panel's procedural notices so that others may make similar suggestions and ensure that necessary information is before you.

10. Ability of Participants to submit lists of documents relevant to the subject matter of the proceeding to be requested by the Joint Panel to be introduced into the Record of the Panel and ability of participants to ask questions of relevant witnesses regarding same;

Similarly we ask that this be explicitly included in the Panel's procedural notices so that all participating in the proceeding may make such suggestions.

11. Ability of Participants and their advisors to provide opinion evidence to the Joint Panel;

We presume that the Intervenors and their experts will be giving opinion evidence to the Panel; similarly we submit that opinions of Participants will be important information for the Panel.

12. Provision of additional funding awards to the funded Participants for participation in the Hearing before the Joint Panel;

We request that the Panel provide additional resources to the Intervenors for the hearing. We request that the Panel call for submissions with funding requests. We note that in the event that a fourth potential generating design is included in the Panel's deliberations, this is especially critical since all work to date was done based on three potential generating designs (albeit with inadequate information in our respectful submission).

13. Provision to ensure that all sessions are fully accessible to the public, both physically and electronically, and in both official languages with simultaneous translation;

The Panel has addressed this.

14. Provision to allow for presentations from individuals and experts in remote locations or in other jurisdictions such as by teleconference, video link or webinar technology including from New York State; other parts of the United States or United Kingdom and elsewhere;

This has not yet been addressed by the Panel. This is of critical import. Several of the Intervenor have experts who would have to attend from great distances. Furthermore the current uncertainty in respect of the schedule for the hearing presents great difficulty for scheduling with experts. We suggest that the Panel could partially schedule the hearing at this time, while allowing additional days for Participant; potentially the hearing could be divided by issues and in particular many of the technical issues days could be set.

15. Provision of satellite hearings by the Panel, including in addition to the hearings in the vicinity of Darlington, hearings in Toronto, Northern Ontario, Montreal, Port Hope and Peterborough, and inclusions of non-weekday hours for hearings in those locations;

Again, to best allow for broad participation and inclusion of those who have a high interest in the proceeding, but for whom travel will make participation difficult or impossible, we request the Panel to establish satellite hearings.

16. Provision for “public days” where members of the public in those same communities who are otherwise not engaged in the hearing may hear a summary of the evidence and ask questions or express their views;

It is not clear that the Panel intends to provide this opportunity; in particular whereby members of the public may hear a summary of the evidence and ask questions or express views (over and above registration as Intervenor or Participants).

17. Permanent archiving of all hearing sessions including opening and closing statements and evidence of all parties and participants, on-line on the CNSC / CEAA websites;

We request that this be done, and that a commitment be made to post all information and submissions on-line on the two websites in a very timely way. Transparency is very problematic when submissions are not posted on-line.

18. Preparation of transcripts of the hearing, electronic accessibility to those transcripts by the participants, one-day turn around of said transcripts, and posting of transcripts on-line on the CNSC and CEAA websites;

This has been partially addressed by the Panel; while the Panel indicates transcripts would be provided as soon as practicable, we would request that this mean at least prior to the next hearing day in each case.

19. Translation of all proceedings, evidence, submissions and documents adduced in the Record of the Joint Panel into both English and French; including full translation of all Parties’, Governments’, Participants’, and public submissions into both official languages as the case may be;

We note that the Panel indicates there will be simultaneous translation; we would request that this include translation of written submissions and evidence.

20. Provision by the Joint Panel of a final decision document which includes a full outline of all information on which it has relied and thorough reasons for its decision.

We repeat this request.

We would also request as a practical matter, that instructions be given that all documents provided in pdf format be saved in such a manner that they are printable, searchable, and excisable (i.e. excerpts can be copied from them to be included in written submissions in response).

We look forward to the Panel's response to the foregoing submission.

Yours very truly,

CANADIAN ENVIRONMENTAL
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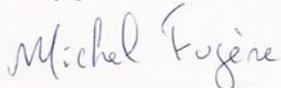
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