

Record of Proceedings, Including Reasons for Decision

In the Matter of

Proponent AREVA Resources Canada Inc.

Subject Environmental Assessment Guidelines (Scope
of Project and Assessment) for the Proposed
Caribou Project at the McClean Lake Operation

Hearing
Date October 31, 2007

RECORD OF PROCEEDINGS

Proponent: AREVA Resources Canada Inc.

Address/Location: P.O.Box 9204, 817-825 Street West, Saskatoon, Saskatchewan,
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Purpose: Environmental Assessment Guidelines (Scope of Project and
Assessment) for the Proposed Caribou Project at the McClean
Lake Operation

Application received: December 21, 2006

Date of hearing: October 31, 2007

Location: Canadian Nuclear Safety Commission (CNSC) Public Hearing
Room, 280 Slater St., 14th. Floor, Ottawa, Ontario

Members present: L.J. Keen, Chair
C.R. Barnes
A. Harvey

Secretary: K. McGee
Recording Secretary: S. Gingras
General Counsel: S. Maislin Dickson

Applicant Represented By	Document Number
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	CMD 07-H148 CMD 07-H148.A

Date of Release of Decision: December 11, 2007

Table of Contents

Introduction	2
Decision	4
Issues and Commission Findings	4
Type of Environmental Assessment Required	4
<i>Screening vs. Comprehensive Study, Review Panel or Mediation</i>	4
Consultations on the Draft EA Guidelines	5
<i>Government Consultation</i>	5
<i>Public Consultation</i>	6
<i>Conclusion on the EA Guidelines Consultations</i>	7
Scope of the Project	7
Scope of the Assessment	8
<i>Temporal and Spatial Scope of the Project</i>	9
<i>Conclusion on the Scope of the Assessment</i>	9
EA Structure and Approach	9
Public Concern on the Project	10
Process for Consideration of Environmental Assessment Screening Report	10
Conclusion	12

Introduction

1. AREVA has notified the Canadian Nuclear Safety Commission¹ (CNSC) of its intention to develop an open pit mine for the “Caribou” uranium deposit at the McClean Lake Operation site in Northern Saskatchewan.
2. The ore would be processed at the existing JEB mill and tailings managed on-site, and the Caribou open pit would be developed entirely within the surface lease boundaries of the McClean Lake Operation.
3. Before the Commission is able to make licensing decisions pursuant to the *Nuclear Safety and Control Act*² (NSCA) in respect of the proposed project, the Commission must, in accordance with the requirements of the *Canadian Environmental Assessment Act*³ (CEAA), make a decision on an environmental assessment (EA) of the proposal. The Commission is the sole Responsible Authority (RA) for the EA⁴.
4. In carrying out this responsibility under the CEAA, the Commission must first determine the *scope of the project* and the *scope of the assessment*. To assist the Commission in this regard, CNSC staff prepared a draft Environmental Assessment Guidelines document (EA Guidelines) in consultation with other government departments, the public and other stakeholders. The draft EA Guidelines (*Project-Specific Guidelines for the Preparation of an Environmental Impact Statement for the Caribou Project*) contain draft statements of scope for the approval of the Commission. The draft EA Guidelines also contain recommendations and instructions for the approach to be used in completing the EA, including for the conduct of further public and stakeholder consultations. The draft EA Guidelines are presented in the CNSC staff document CMD 07-H148.

Issues

5. In considering the EA Guidelines, the Commission was required to decide, pursuant to subsections 15(1) and 16(3) of the CEAA respectively:
 - a) the *scope of the project* for which the EA is to be conducted; and
 - b) the *scope of the factors* to be taken into consideration in the conduct of the EA.

¹ The *Canadian Nuclear Safety Commission* is referred to as the “CNSC” when referring to the organization and its staff in general, and as the “Commission” when referring to the tribunal component.

² S.C. 1997, c. 9.

³ S.C. 1992, c.37.

⁴ Responsible Authority in relation to an EA is determined in accordance with subsection 11(1) of the CEAA.

6. The Commission also considered whether it would, at this time, recommend to the federal Minister of the Environment, pursuant to section 25 of the CEEA, to refer the project to a mediator or a review panel.
7. The Commission considered whether it would, pursuant to subsection 17(1) of the CEEA, delegate the conduct of technical support studies to AREVA.
8. Furthermore, the Commission undertook to decide whether or not the Commission's consideration of the completed EA Screening Report (Screening Report) would be by way of a public hearing, where the public is invited to participate, or by way of a hearing, where there is no public participation, but where the public can observe the hearing.
9. The Commission also considered CNSC staff's proposed streamlined approach to the consideration of the project where the information related to the licensing application would be presented in the context of the hearing held for the consideration of the Screening Report.

Hearing

10. Pursuant to section 22 of the NSCA, the President of the Commission established a Panel of the Commission to hear this matter. In establishing the process, the Commission decided to hold a hearing on the matter, in accordance with the Commission's process for determining matters under the CEEA⁵.
11. In making its decision, the Commission considered information presented for a hearing held on October 31, 2007 in Ottawa, Ontario. During the hearing, the Commission received written submissions and heard oral presentations from CNSC staff (CMD 07-H148 and CMD 07-H148.A) and AREVA (CMD 07-H148.1). CNSC staff and AREVA were present to answer questions from the Commission. The public was invited to observe the proceeding.

⁵ The Commission decided (ref. Minutes of Commission Meeting held on March 23, 2005) that, unless otherwise specified, Commission will not hold public hearings in respect of its decisions on the scope of environmental assessments to be conducted pursuant to the CEEA. The CNSC staff process for engaging the public and other stakeholders in the preparation of the draft EA Guidelines for presentation to the Commission at a hearing, without public participation is normally sufficient at this early stage in the EA process.

Decision

12. Based on its consideration of the matter, as described in more detail in the following sections of this *Record of Proceedings*,

the Canadian Nuclear Safety Commission, pursuant to sections 15 and 16 of the CEAA, approves the *Proposed EA Guidelines (Scope of Project and Assessment) (Project-Specific Guidelines for the Preparation of an Environmental Impact Statement for the Caribou Project) for AREVA's Proposed Caribou Project at the McClean Lake Operation*.

13. The Commission approves the EA Guidelines as presented in CMD 07-H148.
14. The Commission also decides that it will not, at this time, refer the project, pursuant to section 25 of the CEAA, to the federal Minister of the Environment for his referral to a mediator or review panel. The Commission notes that it may make such a referral at any time during the course of the EA process if warranted.
15. Pursuant to subsection 17(1) of the CEAA, the Commission decides that it will delegate the conduct of technical support studies to the proponent, AREVA.
16. The Commission decides to postpone its decision on the hearing process for the consideration of the Screening Report for the Caribou Project until the proposed streamlined process is presented at a future Public Meeting of the Commission.

Issues and Commission Findings

Type of Environmental Assessment Required

Screening vs. Comprehensive Study, Review Panel or Mediation

17. CNSC staff reported that the proposed mining and milling of the Caribou deposit is an undertaking in relation to a physical work and as such, is defined as a project under section 2(1)(a) of the CEAA.
18. The project is not of a type identified in the *Comprehensive Study List Regulations*⁶. CNSC staff reported that there are no identified exclusions from environmental assessment for this project, pursuant to section 7 of the CEAA and the *Exclusion List Regulations*⁷ of the CEAA.

⁶ S.O.R./94-638.

⁷ S.O.R./94-639.

19. Therefore, pursuant to subsection 18(1) of the CEEA, the CNSC is required to ensure that a screening environmental assessment of the project is conducted and a Screening Report is prepared before the Commission can consider a licensing action under the NSCA that would allow the project to proceed in whole or in part.
20. Other available types of assessment under the CEEA are a review panel or mediation appointed by the federal Minister of the Environment. To initiate either of these alternative assessment processes, the Commission would need to refer the project to the Minister pursuant to section 25 of the CEEA. In this regard, CNSC staff stated in its submissions that it is not aware at this time of any potentially significant environmental effects or public concern associated with this project which, in its opinion, would warrant having the project referred to a mediator or review panel.
21. Based on the information received, the Commission concludes that a Screening EA of the project is required pursuant to the CEEA. The Commission further decides that, at this time, it will not refer the project to the Minister of the Environment for referral to a mediator or a review panel. However, because the Commission may make such a referral at any time, the Commission requests that CNSC staff inform the Commission in a timely manner of any significant issues or public concerns that arise during the conduct of the EA and which may warrant further consideration of the need for a review panel or mediator.

Consultations on the Draft EA Guidelines

22. As part of its review of the adequacy of the draft EA Guidelines and, in particular, to assess the level of public concern about the project for the purpose of considering the aforementioned options for mediation or review panel, the Commission took account of the views of the public and other stakeholders. In this regard, the Commission considered whether the consultations carried out thus far by CNSC staff and the proponent provided the public and other stakeholders with adequate opportunity to become informed and express their views about the EA.

Government Consultation

23. CNSC staff reported that, in accordance with the CEEA *Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements*⁸, CNSC staff has consulted on the draft EA Guidelines, and will continue to consult during the course of the EA, with the relevant federal authorities (FAs) (Fisheries and Oceans Canada, Environment Canada, Natural Resources Canada, Indian and Northern Affairs Canada and Health Canada). CNSC staff noted that no other federal departments identified themselves as RAs for the EA, or as expert FAs for the purpose of providing technical assistance.

⁸ S.O.R./97-181.

24. CNSC staff has also consulted Saskatchewan Environment (SE), who determined that a change to an approved development is subject to the provisions of section 16 of the Saskatchewan *Environmental Assessment Act*⁹. Therefore, AREVA has been directed to seek approval for the mining of the Caribou uranium ore body and associated developments pursuant to paragraph 16(2)(c) of this Act. Under this section, AREVA is required to conduct an environmental impact assessment of the proposed mining of the Caribou uranium ore body and prepare and submit an environmental impact statement (EIS) to the Saskatchewan Minister of Environment.
25. CNSC staff reported that the Guidelines were authored jointly by CNSC staff and SE. CNSC staff also noted that the scope of the project and the scope of the assessment were reviewed by the FAs, and that SE and the FAs find the Guidelines to be acceptable.
26. CNSC staff noted that all comments received during the above consultations were taken into consideration in the preparation of the draft EA Guidelines. Information on the disposition of each comment was attached as Appendices B and D of the draft EA Guidelines (attached to CMD 07-H148).

Public Consultation

27. With respect to public consultation on the draft EA Guidelines, CNSC staff reported that it had established a public registry for the assessment as required by Section 55 of the CEAA, including the identification of the EA in the Canadian Environmental Assessment Registry.
28. AREVA reported that it had prepared a Public Consultation Plan and submitted this plan to SE and the Canadian Environmental Assessment Agency with copy to the CNSC. AREVA noted having received a written acceptance of this Plan from both SE and the CNSC.
29. AREVA reported that it undertakes a wide range of public consultation activities on an ongoing basis, including focused discussion and two-way communication between AREVA and the public as well as other stakeholders in order to promote broader understanding of potential effects.
30. AREVA indicated that the primary target audience lives in the Athabasca communities of Northern Saskatchewan or work in close proximity to the project. AREVA also noted that a number of target groups and committees participate in consultation activities on a regular basis. CNSC staff confirmed that AREVA had initiated consultation with the public and interested stakeholders.

⁹ S.S. 1979-1980, c. E-10.1.

31. CNSC staff reported that CNSC staff and SE have solicited comments from the public during the development of the proposed Guidelines. The list of stakeholders and members of the public contacted during this consultation process includes several northern communities and First Nations, the Environmental Quality Committee, non governmental organizations, the media and some individuals. Three submissions were received.
32. The Commission asked for comments on AREVA's overall relationship with the Métis. AREVA responded that it considers the relationship as being constructive, and that it was looking forward to ongoing discussions with not only this group, but with any other group in Northern Saskatchewan who wishes to have a dialogue with the company. CNSC staff indicated that the relationship with the Métis was new, and that it intended to meet with the Métis near the end of November 2007. CNSC staff added that the Métis have provided them with their request to be fully engaged in this environmental assessment, and that CNSC staff acknowledged and welcomed the request.

Conclusion on the EA Guidelines Consultations

33. Based on the above information and considerations, the Commission is satisfied that the federal departments, SE, the public and other stakeholders have been adequately consulted during the preparation of the draft EA Guidelines. The Commission is also satisfied that CNSC staff has taken an active role in consulting the public.
34. The Commission is satisfied that, for the purpose of considering whether to refer the project to the Minister for a review panel or mediation, it had sufficient information to assess the current level and nature of public concern about the project.

Scope of the Project

35. "Scope" under the CEAA is expressed in two parts: the *scope of the project* (i.e., the physical works and activities proposed) and the *scope of assessment* (i.e., the scope of the factors to be considered in assessing the effects of the project). This section addresses only the issues relating to the *scope of the project*. The issues related to the *scope of assessment* are discussed below in the section entitled Scope of the Assessment.
36. AREVA explained that the project involves open pit mining within the surface lease boundary of the McClean Lake Operation, processing of the ore at the JEB mill and disposal of tailings at the JEB Tailings Management Facility. AREVA added that the development of the Caribou deposit will largely use the existing mine infrastructure and facilities in the area, and that the incremental interactions of the proposed project with the environment will be limited. CNSC staff confirmed that the scope includes

mining the Caribou ore body, including the development of an open pit mine, the construction and use of a new clean waste rock pile, and the operation of waste management systems and site facilities associated with the Caribou development.

37. The Commission asked whether sufficient drilling was done to indicate that the planned mining area was properly defined. AREVA responded that extensive drilling exploration and delineation was performed to properly identify the base of the mineralization. AREVA added that it was unlikely that the project, as defined in the EA Guidelines, would change as a result of unexpected discoveries of uranium ore during mining.
38. Based on the information received, the Commission accepts CNSC staff's recommendations concerning the *scope of the project* and approves the definition of the project scope as set out in section 1.6 of the draft EA Guidelines, without change.

Scope of the Assessment

39. The other part of “scope” under the CEAA is the *scope of the assessment* – otherwise described in the CEAA as the scope of the factors that will be considered in assessing the environmental effects of the project.
40. The scope of a screening assessment under the CEAA must include the factors set out in paragraphs 16(1)(a) to (d) of the CEAA. Other factors may be included at the discretion of the Commission under paragraph 16(1)(e) of the CEAA.
41. The mandatory factors in subsection 16(1) of the CEAA are: the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out; significance of these effects; the comments from the public that are received in accordance with the CEAA and its regulations; and measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project.
42. As allowed by paragraph 16(1)(e) of the CEAA, CNSC staff recommended that the Commission also require the following additional factors: the need for, and requirement of, a follow-up program; the capacity of renewable resources that are likely to be significantly affected by the project; and an assessment of the long-term performance of the waste facilities that receive waste rock and tailings from the proposed Caribou project post-decommissioning.

43. The Commission asked about mining exploration in the area, noting that the opening of additional mines could contribute to cumulative effects. AREVA responded that it was convinced that there are more deposits in the surroundings of McClean Lake, and that it was actively searching for them. The Commission also enquired whether cumulative effects had been sufficiently taken into account in the EA Guidelines. CNSC staff responded that there are very clear requirements in the EA Guidelines for evaluating all cumulative effects of the project.
44. The Commission sought further information on which elements found during x-ray analysis of drill holes could pose a significant environmental concern. CNSC staff responded that the elements listed in AREVA's application were a preliminary list only and that a follow-up program would be necessary to determine the elements that could cause problems. CNSC staff added that it considers the analysis method used by AREVA to be appropriate.

Temporal and Spatial Scope of the Project

45. The scope of the factors includes a description of the spatial boundaries for the project. CNSC staff described the boundaries as follows: the site study area, the local study area, and the regional study area. The temporal boundaries for the project are also provided. CNSC staff noted that AREVA must cover the period from the start of any pre-construction activity associated with the project through construction, operation, and the long-term performance of waste management facilities. The proposed Guidelines also state that at a minimum, the EA is expected to include the period of time during which the maximum impact is predicted to occur.

Conclusion on the Scope of the Assessment

46. Based on the above information and considerations, the Commission concludes that the scope of the assessment, as described in section 1.8 of the draft EA Guidelines, is appropriate for the purpose of the environmental assessment of the proposed project.

EA Structure and Approach

47. CNSC staff included in the EA Guidelines a detailed description of the expected content of the Screening Report. In particular, CNSC staff indicated that an executive summary of the EIS is required. This summary should briefly summarize and cross-reference the EIS under the following topic areas:
 - description of the project;
 - purpose of, need for, and alternative means of carrying out the project;
 - environmental effects of the project, including the potential spills/malfunctions/accidents;

- any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;
 - technically and economically feasible mitigation measures;
 - the significance of environmental impacts;
 - the need for, and the requirements of, any follow-up program in respect of the project;
 - the capacity of renewable resources that are likely to be significantly affected by the project;
 - comments from the public and AREVA's responses; and
 - identification of uncertainties in regards to the project elements and/or environmental impacts of the project, including those of a chemical, physical, and/or radiological nature.
48. Based on the above information and considerations, the Commission is satisfied that the structure, approach, and other instructions for conducting the environmental assessment, as described in the EA Guidelines attached to CMD 07-H148, are acceptable.

Public Concern on the Project

49. CNSC staff reported that three comments from the public were received during the public review period for the draft EA Guidelines. CNSC staff noted that it is not aware, at this time, of any public concerns associated with this project that would warrant referral to a mediator or review panel.
50. As noted in paragraph 34, the Commission is satisfied that the public received adequate opportunity to identify concerns regarding the draft EA Guidelines.
51. The Commission therefore decides not to refer the project to the Minister of the Environment for referral to a review panel or mediator under paragraph 20(1)(c) of the CEEA.

Process for Consideration of Environmental Assessment Screening Report

52. The Commission examined CNSC staff's recommendations on the process to be followed for the consideration of the Screening Report and the licensing application.
53. CNSC staff suggested options for two different processes. CNSC staff stated that the first suggested process is an integrated and systematic approach (streamlined process), where AREVA would provide the information in the EIS in sufficient detail to comply with the requirements of the CEEA and the licensing application under the NSCA. CNSC staff explained that this information could then be reviewed and presented in a public hearing for a decision on the Screening Report and review of the licensing documentation in support of an application for a licence amendment. Then, if the

Commission decides that the requirements of the CEAA are met, the Commission could subsequently consider the licence amendment application in the context of a separate hearing, with no further public participation.

54. CNSC staff also proposed the status quo as an alternative process, which involves a hearing on the Screening Report to be followed by a separate, future public hearing on the licence amendment if the EA requirements have been met. CNSC staff, noting that public interest for this project has been low, recommended that the Screening Report be considered by the Commission in the context of a hearing with no public participation.
55. CNSC staff stated that because relevant information is required for both the Screening Report and the licence amendment, the streamlined process would reduce the effort required in CNSC staff's review of the documentation, while maintaining regulatory oversight. CNSC staff expressed the opinion that the streamlined process would provide gains in efficiency while maintaining the same level of regulatory effectiveness.
56. CNSC staff suggested using the Caribou EA and licence amendment request as a pilot to test the suggested streamlined process, since the McClean Lake Operation has several already-assessed projects, and the baseline environmental characteristics and the environmental effects are well known and understood.
57. CNSC staff further noted that it plans to present recommendations for the streamlined process in further details at a Public Meeting of the Commission in the spring of 2008.
58. In consideration of the streamlined approach, the Commission asked about the projected timelines for the project. CNSC staff responded that, following the Commission's decision on the proposed EA Guidelines, it expects to receive the technical studies from AREVA in January 2008, and that the review of these studies could be completed in March 2008. CNSC staff added that a Screening Report could be ready for public consultation in May 2008 and that the Commission hearing on the matter could be held during the summer of 2008.
59. At the request of the Commission, AREVA confirmed that it understands the business-related risks related to the proposed streamlined process, since the CEAA requirements must be fulfilled before the Commission can make a decision on the licence amendment request. If the Commission does not accept the Screening Report, the licence amendment request would not be considered.

60. In response to a question from the Commission on whether the Regulatory Advisory Committees (RAC) of the CNSC were consulted on this proposed streamlining process, CNSC staff explained that a workshop with the non-governmental organization (NGO) RAC was planned for January 2008. CNSC staff plans to include the NGO RAC's considerations on the proposed streamlined process with its recommendations to the Commission at a Public Meeting in the spring of 2008.
61. The Commission acknowledges CNSC staff's efforts in presenting the proposed streamlined process. However, the Commission believes that more information is needed for it to make a decision on the process changes as suggested by CNSC staff. The Commission believes that CNSC staff needs to further elaborate the process and to include in this work the results of a consultation with the CNSC RACs.
62. The Commission also wishes to bring this matter to the full Commission at a public meeting for a decision on this request, rather than using a Panel of the Commission for a decision.
63. The Commission decides to defer its decision on the hearing process for the Screening Report for the Caribou Project until the proposed streamlined process is presented at a Public Meeting of the Commission in the spring of 2008.
64. If the streamlined process is accepted, the Commission would consider a submission from AREVA which would include a full project management approach for the Caribou Project.

Conclusion

65. The Commission has considered the submissions of CNSC staff as presented for reference on the record for the hearing.
66. The Commission, pursuant to sections 15 and 16 of the CEAA, approves the Project-Specific Guidelines for the Preparation of an Environmental Impact Statement for the Caribou Project, as presented in CMD 07-H148.
67. Pursuant to subsection 17(1) of the CEAA, the Commission decides that it will delegate the conduct of technical support studies to the proponent, AREVA.
68. The Commission concludes that, at this time, it will not refer the project to the federal Minister of the Environment for referral to a mediator or review panel in accordance with the provisions of the CEAA.
69. The Commission decides to defer its decision on the hearing process for the Screening Report for the Caribou Project until CNSC staff's proposed streamlined process is presented at a Public Meeting of the Commission in the spring of 2008.

70. The Commission requests CNSC staff to report to the Commission on any issues arising during the conduct of the EA that could warrant the Commission giving further consideration to the above scope and process decisions.

Linda J. Keen,
President
Canadian Nuclear Safety Commission

Date of release of Decision: December 11, 2007