

**AGREEMENT
TO ESTABLISH A JOINT REVIEW PANEL
FOR THE DEEP GEOLOGIC REPOSITORY PROJECT BY ONTARIO POWER
GENERATION INC. WITHIN THE MUNICIPALITY OF KINCARDINE, ONTARIO**

BETWEEN

**THE MINISTER OF THE ENVIRONMENT
-and-
THE CANADIAN NUCLEAR SAFETY COMMISSION**

PREAMBLE

WHEREAS the Minister of the Environment has statutory responsibilities pursuant to the *Canadian Environmental Assessment Act*;

WHEREAS the Commission has statutory responsibilities pursuant to the *Nuclear Safety and Control Act* and to the *Canadian Environmental Assessment Act*;

WHEREAS Ontario Power Generation Inc. has applied to the Commission to seek approval to construct a deep geologic repository;

WHEREAS the Project would be carried out within the area that the Chippewas of Nawash Unceded First Nation and the Chippewas of Saugeen First Nation identify as Anishnaabekiing, the territory they have traditionally used and occupied;

WHEREAS the Chippewas of Nawash Unceded First Nation and the Chippewas of Saugeen First Nation have expressed concerns that the Project might adversely affect Aboriginal rights or title they assert in that area;

WHEREAS the Minister and the Commission acknowledge that a duty to consult arises when the Crown has knowledge, real or constructive, of the potential existence of an Aboriginal rights or title and contemplates conduct that might adversely affect it;

WHEREAS a review of the Project by a Joint Review Panel is an important source of information about effects the Project may have on the Chippewas of Nawash Unceded First Nation and the Chippewas of Saugeen First Nation's asserted Aboriginal rights or title, and would therefore support ongoing

consultations between the Crown and Chippewas of Nawash Unceded First Nation and the Chippewas of Saugeen First Nation

WHEREAS the Project is within the jurisdiction of the Commission under the *Nuclear Safety and Control Act* and requires an environmental assessment pursuant to the *Canadian Environmental Assessment Act*;

WHEREAS the Commission is the sole responsible authority for the Project pursuant to the *Canadian Environmental Assessment Act*;

WHEREAS the Project requires a public hearing pursuant to the *Nuclear Safety and Control Act* and the *Canadian Nuclear Safety Commission Rules of Procedure*;

WHEREAS the Commission has recommended, in accordance with paragraph 21(2)(b) of the *Canadian Environmental Assessment Act*, that the Minister of the Environment refer the Project to a review panel;

WHEREAS the Minister of the Environment has referred the Project to a review panel in accordance with section 29 of the *Canadian Environmental Assessment Act*;

WHEREAS the Parties to this Agreement have determined that a review of the Project by a joint review panel will ensure that the Project is reviewed in a manner that will provide for an effective and efficient environmental assessment and regulatory process;

AND WHEREAS the Minister of the Environment has determined that a joint review panel should be established pursuant to subsection 40(2) of the *Canadian Environmental Assessment Act* to consider the Project;

NOW THEREFORE, the Parties hereby establish a Joint Review Panel for the Project in accordance with the provisions of this Agreement and the Terms of Reference attached as an Appendix to this Agreement.

1. DEFINITIONS

In this Agreement:

“**Agency**” means the Canadian Environmental Assessment Agency;

“**CEAA**” means the *Canadian Environmental Assessment Act*;

“**Commission**” means the Canadian Nuclear Safety Commission;

“**Environment**” has the same meaning as set out in section 2 of the CEEA;

“**Environmental Effect**” has the same meaning as set out in section 2 of the CEEA;

“**Environmental Impact Statement**” means the document that the proponent will prepare in accordance with the Environmental Impact Statement Guidelines issued by the Parties pursuant to Part II of the Appendix to this Agreement.

“**Federal Authority**” has the same meaning as set out in section 2 of the CEEA;

“**Follow-up program**” has the same meaning as set out in section 2 of the CEEA;

“**Intervenor**”, means a person appearing at a Joint Review Panel Hearing pursuant to rule 18 of the *Canadian Nuclear Safety Commission Rules of Procedure*, a person participating as an intervenor in a Joint Review Panel Hearing pursuant to rule 19 of the *Canadian Nuclear Safety Commission Rules of Procedure* or a person who establishes an interest to participate in the Joint Review Panel Hearings by way of a written submission and/or an oral presentation.

“**Joint Review Panel**” means a Joint Review Panel established through this Agreement;

“**Joint Review Panel Agreement**” means this Agreement to Establish a Joint Review Panel for the Deep Geologic Repository Project by Ontario Power Generation Inc. within the Municipality of Kincardine, Ontario, and the attached Appendix;

“**Joint Review Panel Hearing**” means the public hearing process followed by the Joint Review Panel to hear information and evidence required for the Review;

“**Joint Review Panel Report**” means a report which sets out the rationale, conclusions and recommendations of the panel relating to the environmental assessment of the project, including any mitigation measures and follow-up program, and a summary of any comments received from the public in the course of the Joint Review Panel Hearings;

“**Jurisdiction**” has the same meaning as set out in subsection 40(1) of the CEEA;

“**Licence Application**” means the documentation filed by the Proponent under the NSCA to prepare and construct a site for the Project;

“**NSCA**” means the *Nuclear Safety and Control Act*;

“**OPG Inc.**” means Ontario Power Generation Inc.;

“**Parties**” mean the signatories to this Agreement;

“**Project**” means the preparation of a site for, and the construction, operation decommissioning and abandonment of, a deep geologic repository on the existing Bruce Nuclear Site within the Municipality of Kincardine, Ontario to store low- and intermediate-level radioactive waste as more fully described in Part I of the Appendix to this Agreement;

“**Proponent**” means OPG Inc.

“**Public Registry**” means the Canadian Environmental Assessment Registry established under section 55 of the CEEA, to facilitate public access to records relating to the environmental assessment of the Project;

“**Responsible Authority**” has the same meaning as set out in section 2 of the CEEA;

“**Review**” means the assessment by the Joint Review Panel of the environmental effects of the Project to be conducted pursuant to the CEEA and the consideration of the Licence Application under the NSCA to determine whether the Project will pose an unreasonable risk to the health and safety of persons, the environment and national security.

“**Rules of Procedure**” means the *Canadian Nuclear Safety Commission Rules of Procedure*; and

“**SON**” means the Chippewas of Nawash Unceded First Nation and the Chippewas of Saugeen First Nation

2. ESTABLISHMENT OF THE JOINT REVIEW PANEL

2.1 A process is hereby established to create a Joint Review Panel that will:

- a) constitute a review panel pursuant to sections 40, 41 and 42 of the CEEA for the purposes of carrying out an environmental assessment of the Project; and
- b) constitute a panel of the Commission, created pursuant to section 22 of the NSCA, for the purposes of the review of the Licence Application pursuant to section 24 of the NSCA.

2.2 Nothing in this Joint Review Panel Agreement shall be construed as limiting the ability of the Joint Review Panel to have regard to all considerations that appear to be relevant pursuant to section 24 of the

NSCA and to include a consideration of the factors set out in sections 16 and 16.1 of the CEEA.

3. CONSTITUTION OF THE JOINT REVIEW PANEL

- 3.1** The Joint Review Panel will consist of three members. Two members, including the Joint Review Panel Chair, will be appointed by the President of the Commission with the approval of the Minister of the Environment.
- 3.2** The Minister of the Environment will propose to the President of the Commission a candidate as a third member of the Joint Review Panel who may also serve as a temporary member of the Commission.
- 3.3** Upon approval by the President of the Commission of a candidate as a third member of the Joint Review Panel who may also serve as a temporary acting member of the Commission, the President of the Commission will recommend to the Minister of Natural Resources that the Minister of Natural Resources recommend the proposed candidate to the Governor in Council for the appointment of that proposed candidate as a temporary member of Commission.
- 3.4** If appointed by the Governor in Council as a temporary member of Commission, the selected candidate will then be appointed by the Minister of the Environment as a member of the Joint Review Panel.
- 3.5** The members of the Joint Review Panel are to be unbiased and free of any conflict of interest in relation to the Project and are to have knowledge or experience relevant to the anticipated environmental effects of the Project.

4. CONDUCT OF THE REVIEW

- 4.1** The Joint Review Panel shall conduct the Review in accordance with the Terms of Reference attached as an Appendix to this Joint Review Panel Agreement in a manner that:
 - a) discharges the requirements set out in the CEEA; and,
 - b) permits it to obtain the information and evidence required for it to consider the Licence Application.
- 4.2** The Joint Review Panel shall have all the powers and duties of a review panel described in section 35 of the CEEA.

- 4.3** As a panel of the Commission, the Joint Review Panel shall also have the powers and duties of the Commission described in section 20 of the NSCA and the Rules of Procedure.

5. SECRETARIAT

- 5.1** A Secretariat will be formed consisting of professional, scientific, technical or other Agency and Commission personnel necessary for the purposes of the Review.
- 5.2** The Secretariat will provide information to the Joint Review Panel orally and in writing during the Joint Review Panel Hearings.
- 5.3** The personnel who comprise the Secretariat shall not be considered to be intervenors.
- 5.4** The Commission will provide its offices for the conduct of the activities of the Joint Review Panel and the Secretariat.
- 5.5** The Secretary of the Commission, or his designate, will act as Secretary to the Joint Review Panel and as co-manager of the Secretariat.
- 5.6** The Agency shall appoint a panel manager as co-manager of the Secretariat.

6. RECORD OF THE REVIEW

- 6.1** Subject to section 55 and subsections 35(4), and 35(4.1) of the CEEA, the Public Registry will include all submissions, correspondence, hearing transcripts, exhibits and other information received by the Joint Review Panel and all public information produced by the Joint Review Panel relating to the Review.
- 6.2** The internet site component of the Public Registry will be maintained by the Secretariat during the course of the Review in a manner that provides for convenient public access, and for the purposes of compliance with sections 55 to 55.5 of the CEEA.
- 6.3** A project file will be maintained by the Secretariat during the course of the Review in a manner that provides for convenient public access, and for the purposes of compliance with sections 55 and 55.4 of the CEEA. This project file will be located in the offices of the Secretariat.

7. JOINT REVIEW PANEL REPORT

- 7.1 On completion of the assessment of the Project, the Joint Review Panel will prepare a Joint Review Panel Report.
- 7.2 The Joint Review Panel will convey the Joint Review Panel Report in writing in both official languages to the Minister of the Environment who will then publish the report.
- 7.3 The panel of the Commission will take a course of action with respect to the Licence Application in accordance with section 37 of the CEEA.

8. OTHER FEDERAL DEPARTMENTS AND JURISDICTIONS

- 8.1 At the request of the Joint Review Panel, federal authorities having specialist information or knowledge with respect to the Project shall make available that information or knowledge in a manner acceptable to the Joint Review Panel.
- 8.2 Subject to article 8.1, nothing in this Joint Review Panel Agreement shall restrict the participation of a Jurisdiction by way of submission to the Joint Review Panel.

9. PARTICIPANT FUNDING

- 9.1 Participant funding for the Review will be provided and administered by the Agency pursuant to the Participant Funding Program.

10. AMENDING THIS JOINT REVIEW PANEL AGREEMENT

- 10.1 The terms and provisions of this Joint Review Panel Agreement may be amended by written memorandum executed by both the Minister of the Environment and the President of the Commission.
- 10.2 Subject to section 27 of the CEEA, upon completion of the Review, this Joint Review Panel Agreement may be terminated at any time by an exchange of letters signed by both Parties.

The Honourable John Baird
Minister of the Environment

Michael Binder
President, Canadian Nuclear Safety
Commission

APPENDIX

Terms of Reference for the Review

Part I - Project Description

The scope of the Project includes the site preparation, construction, operation, decommissioning and abandonment of the Project components and activities for a Deep Geologic Repository for Low and Intermediate Level Radioactive Waste.

The physical works for this Project include both surface facilities and underground facilities. Surface facilities include two permanent buildings, plus buildings required for ancillary facilities. The principal structures of the surface facilities are:

- Receipt/Access Building: this building would contain facilities for underground access by ramp or shaft. If access is by shaft, this building would include a hoist/headframe/cage.
- If access is by ramp, this building would include ramp access. This building would also contain facilities for staff, as well as the heating ventilation air conditioning (HVAC) equipment. Low- and intermediate-level waste would be received at this building and staged for transfer to the deep geologic repository. This building would also be used for transfer and removal of excavated rock during construction activities.
- Ventilation Shaft Headframe Building: this building would provide cover for the ventilation shaft, exhaust fans, sampling/monitoring devices, a hoist and mechanical/electrical systems.

Underground facilities include the following:

- Ramp or Main Shaft: the main shaft would be excavated using drill and blast methods. The ramp would be tunneled into the rock. Either the ramp or the shaft would be used to bring materials and waste into the deep geologic repository.
- Ventilation Shaft: the ventilation shaft would be used to route air and provide emergency egress. This shaft would be excavated by drill and blast or raise bore methods.
- Underground Tunnels: these tunnels would provide access from the underground receipt area to the operational level.
- Emplacement Rooms: these rooms would provide approximately 160,000 m³ capacity for low- and intermediate-level waste.
- Operational Level Office, amenities and maintenance areas: these would be constructed adjacent to the main shaft/ramp and used for

servicing underground equipment, and serve as a distribution point for services.

The physical works also include site infrastructure such as power, a sanitary sewer system, a potable water system, a storm water system, a subsurface drainage system, a construction laydown area, access roadways, fencing, a rock pile and associated roads, security and a roadway for linking the deep geologic repository to the existing Western Waste Management Facility.

The undertakings in relation to the physical works comprise site preparation, construction, operation, and decommissioning of the facility as well as those undertakings that would likely be carried out. These activities are:

- *Site Preparation:* clearing a portion of the proposed site (approximately 15 hectares are wooded) and development of roads to provide site access.
- *Construction:* construction of surface facilities, the shaft or ramp, the ventilation shaft, and the underground excavation of tunnels and an initial set of emplacement rooms. Construction would also result in storage of rock in a temporary pile on the Bruce site.
- *Operation:* operational activities include retrieving waste from the Western Waste Management Facility and intermediate level waste into the deep geologic repository. The operational phase may also include construction campaigns for additional emplacement rooms.
- *Decommissioning:* decommissioning activities include dismantling the equipment, sealing the repository and access ways and decontaminating and demolishing the surface facilities.
- *Abandonment:* although there are no activities associated with abandonment, the long term performance of the facility post-decommissioning is included.

Part II - Components of the Review

1. Within 30 days of the close of the public comment period regarding the draft Environmental Impact Statement Guidelines, the Minister of the Environment shall, following consultation with the President of the Commission and after taking into account the comments received by the public and the SON, issue the Environmental Impact Statement Guidelines.

2. The Parties shall require the Proponent to prepare the Environmental Impact Statement in accordance with the Environmental Impact Statement Guidelines issued by the Minister.
3. The Joint Review Panel will ensure that the Environmental Impact Statement is distributed for examination and comment by the public and the SON to determine whether additional information should be provided before convening the Joint Review Panel Hearings.
4. The Joint Review Panel shall make the Environmental Impact Statement available for public examination and comment for a period of 90 days.
5. Written comments received pursuant to clause 7 shall be made public and be provided to the Proponent by the Joint Review Panel.
6. The Proponent shall provide to the Joint Review Panel its response to the written comments regarding the Environmental Impact Statement not later than 30 days following completion of the period for public examination and comment.
7. At the request of the Joint Review Panel, the Secretariat shall provide written and oral professional, scientific and technical assessment to the Joint Review Panel.
8. The Joint Review Panel may secure the services of external experts to provide information on and help interpret scientific and technical issues and issues relative to community knowledge and aboriginal traditional knowledge
9. Should the Joint Review Panel identify deficiencies after reviewing the Environmental Impact Statement, and in consideration of any comments received from the public, the SON or the proponent pursuant to clauses 4 and 5, the Joint Review Panel may obtain additional information it deems necessary.
10. The Joint Review Panel shall schedule and announce the start of the Joint Review Panel Hearing once it is satisfied that it has obtained the necessary information; it shall provide public notice of 60 days prior to the start of the Joint Review Panel Hearings.
11. The Joint Review Panel shall hold the Joint Review Panel Hearings within the Municipality of Kincardine.
12. The Joint Review Panel shall deliver its Joint Review Panel Report to the Minister of the Environment within 90 days following the close of the Joint Review Panel Hearings.

Part III – Procedure

1. The Joint Review Panel Hearings will be conducted in accordance, and the Joint Review Panel shall comply with the NSCA and the Rules of Procedure.
2. The Joint Review Panel, when appointed, will issue Directions on Procedure in accordance with the Rules of Procedure and in conformity with the provisions of this Joint Review Panel Agreement.

3. As a panel of the Commission, the Joint Review Panel may vary, pursuant to Rule 3, the Rules of Procedure to follow throughout the Joint Review Panel Hearings.
4. Subject to article 12 of this Joint Review Panel Agreement and articles 25 and 26 of this Appendix, the Joint Review Panel Hearings shall be public and the Review will provide opportunities for timely and meaningful participation by the public and the SON
5. For the purposes of CEEA or the NSCA, the Joint Review Panel Hearings shall be public unless the Joint Review Panel is satisfied after representations made by a witness that specific, direct and substantial harm would be caused to the witness or specific harm to the environment by the disclosure of the evidence, documents or other things that the witness is ordered to give or produce, or that information to be presented involves national or nuclear security; the information is confidential information of a financial, commercial, scientific, technical, personal or other nature that is treated consistently as confidential and the person affected has not consented to the disclosure; or the disclosure of the information is likely to endanger the life, liberty or security of a person.
6. Intervenors in the Joint Review Panel Hearings will be limited to a 40 minute presentation. Each presentation may be followed by a question and answer period led by the Joint Review Panel, followed by questions from other Intervenors. Additional time for presentations or questions may be granted at the discretion of the Joint Review Panel Chair.
7. Questions will be directed through the Joint Review Panel Chair who may subsequently allow a participant to put questions directly to the presenter. Where a person does not adhere to the procedures and the direction of the Joint Review Panel Chair, the Joint Review Panel Chair will have the authority to refuse to permit further questioning from that person.
8. The Joint Review Panel Chair may limit or exclude questions or comments that fall outside the mandate of the Joint Review Panel, are repetitive, irrelevant, or immaterial.
9. The Joint Review Panel Chair may limit discussion that exceeds the time limit.

Part IV – Scope of the Environmental Assessment and Factors to be Considered in the Review

1. The Review will include a consideration of the following factors listed in paragraphs 16(1)(a) to (d) and in subsection 16(2) of the CEEA:
 - a) 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 that have been or will be carried out;
 - b) The significance of the effects referred to in paragraph a;

- c) Comments from the public that are received during the Review;
- d) Measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the Project;
- e) The purpose of the Project;
- f) Need for the Project;
- g) Alternatives to the Project
- h) Alternative means of carrying out the Project that are technically and economically feasible and the environmental effects of any such alternative means;
- i) The requirements of a follow-up program in respect of the Project; and
- j) The capacity of renewable resources that are likely to be significantly affected by the Project to meet the needs of the present and those of the future.
- k) The consideration of community knowledge and aboriginal traditional knowledge.