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Project No. 1034813.A5002

July 16, 2008

Mr. Carl Cannon
Chief Administrative Officer
Municipality of Port Hope
PO Box 117
Port Hope, Ontario
L1A 3V9

Dear Mr. Cannon

Re: Review of “Process Improvement Initiatives for Screening Environmental Assessments at the CNSC (Draft)”

At your request, Jacques Whitford has undertaken a review of the above referenced document that is currently under public review. The intent of the document is stated to “...provide all parties involved in a Screening-level EA [environmental assessment] at the CNSC [Canadian Nuclear Safety Commission] with clearly defined processes to follow and tools to work with in order to complete the EA effectively and efficiently.”

In conducting our review, we understand that the Municipality of Port Hope is particularly interested in ensuring that the EA of projects within or proximal to its municipal boundaries under the *Canadian Environmental Assessment Act (CEAA)*, either by the CNSC on its own or in conjunction with other responsible authorities, assure the following:

- opportunity for the Municipality and its residents to participate in the EA;
- a fair and transparent EA process that ensures that the requirements of the *CEAA* are met, that the environmental effects are assessed, mitigation is applied where there are potential environmental effects, and that the need for a follow-up program is considered; and that
- input of the Municipality and its residents is considered thoroughly and respectfully in accordance with Section 16(1)(c) of the *CEAA*, in such a manner that respects their right to be consulted on Projects within the community.

Further, it is understood that the Municipality views the nuclear industry to be a vital part of its social and economic fabric and welcomes improvements in process that facilitate the undertaking of projects that are safe, environmentally acceptable, and economically viable.

In conducting this review, Jacques Whitford has focused on the interests of the Municipality and has categorized comments on two levels. We first offer general or

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high-level comments. Following this, detailed comments are provided in support of the general comments or other matters that are specific.

General Comments

The consultation document does not effectively identify, in its early chapters, the problem that it wishes to address. Chapter 1 in particular is difficult to follow and tends to obscure the understanding of what is intended. In reading the entire document it is evident that the CNSC perceives that its current practices are ineffective, resulting in a one-size-fits-all process that is, for many projects, unnecessarily onerous and time-consuming.

We believe that the CNSC needs to view its mandate under *CEAA* as a planning process for determining the acceptability of a project in principle. It should view its licensing process as the permitting stage of its approval where the details of the approval are addressed. Moreover, some of the CNSC's responsibilities under the *Nuclear Safety and Control Act (NSCA)* address an overlapping but different set of issues and responsibilities. Attempts to bolt together the requirements of the *NSCA* and *CEAA* have contributed to past problems, and this initiative is in part trying to address those problems. Central to this will be the CNSC's ability to use the right tools to address EA requirements. In this regard, efforts should be made to make well-thought-out discretionary decisions under the *CEAA*, in a transparent way, which meaningfully engage the limited resources of the Municipality and members of the public. The proposed approach of applying generic EA Guidelines in combination with the proposed new Scoping Information Document will restrict, rather than facilitate, the thoughtful application of the discretion afforded to the CNSC under Section 15(1)(a) of the *CEAA* to limit the scope of the project in relation to which an EA must be conducted.

The document wrongly identifies the CNSC hearing and public consultation processes as being major contributors to long timelines for approval of simple screenings under the *CEAA*, and based upon this faulty identification of root cause, seeks to reduce or eliminate public involvement in screenings that are identified as "smaller or lower-risk projects", or where public interest is anticipated to be low. The arguments and data advanced by CNSC staff to support this profound change in CNSC policy would appear to be misleading, as will be demonstrated in the detailed comments below. The process improvement initiatives should be revised in order that members of the public and other interveners will still have access to meaningful and substantive project information as well as timelines that will allow interested parties to provide meaningful comment to the CNSC for consideration in accordance with Section 16(1)(c) of the *CEAA*. The proposed criteria for determination of whether or not public participation is required in the new CNSC process under the *CEAA* must be amended to afford a lower and more reasonable threshold for public involvement. This is essential to make the process changes effective. Similarly, the determination of the risk of a project needs some considerable improvement to be reasonable and appropriate.

The Decision-making Process for EAs on Pages 22 and 23 require amendment to reflect the discretionary decisions contemplated in the legislation in respect of Sections 16(1)(e) and 38(1). The process as illustrated in the Table does not fully and accurately reflect the requirements of the legislation.

The Process Improvement Initiatives document says little about the role of federal coordination and multiple responsible authorities or jurisdictions in an EA. This is a deficiency.

Specific Comments

- Page 4, Commission Direction on EA Initiatives: this section should provide an outline of the changes that were made to the CNSC EA processes in 2003, 2004 and 2005, either in the text, or in the form of an Appendix.
- Page 5 and elsewhere: the Canadian Environmental Assessment Agency, *Canadian Environmental Assessment Act*, and in particular the abbreviations *CEA Act* and *CEAA* are used in a way such that it is sometimes unclear whether the Act or the Agency is intended.
- Page 5, Length of Screenings: the length of time taken to complete completed EAs as presented in the Table is, as presented, very misleading. Appendix B (page 49) indicates that “the clock is stopped” during periods when the proponent is undertaking technical studies. As can be seen in Appendix D (pages 57, 58 and 59) there are often lengthy delays on the part of proponents following CNSC decisions, but these delays are being “counted” as part of the time to complete the EA. In fact, the most egregious delays in completing EAs, leading to situations where it appears to take in excess of 5 years to complete a screening, are caused by delays on the part of the proponent, or possibly by lengthy back-and-forth review processes between the proponents and CNSC staff. The discussion should be normalized through consideration only of the time that the EA is under the control of the CNSC.
- Page 6, Length of Screenings: the length of time taken to complete ongoing EAs as presented in the Table is very misleading, for the same reason as given in the bullet above.
- Pages 5 and 6, Length of Screenings: the number of screenings completed and ongoing cited in the text does not agree with the numbers indicated in the Tables.
- Pages 7 and 8: on this and the following page, the case is made that the CNSC EA process is presently too complex to effectively apply to small or lower-risk projects, and the conclusion is drawn that the problem is attributable to too many Commission hearings, and too many public participation opportunities under the current approach. It is asserted that “the hearing process alone can take between 300 and 435 days”, but this is

misleading since many other activities, such as translation, staff preparation of documents, public comment periods, and proponent work on technical studies can proceed simultaneously within this time period.

- Page 7, Public Participation Opportunities: it is properly noted that under the present system, two public consultation periods of 30 calendar days occur. These 30 day periods in reality afford a minimal amount of time for meaningful review and comment on complex information, and as noted above, cannot be considered the cause of often long timelines for screenings.
- Pages 7 and 8, Public Participation Opportunities: other types of opportunity for public involvement are identified, including CNSC-led open houses or information sessions, and proponent-led activities. However, while these kinds of activities are often helpful to lay persons, they do not constitute meaningful consultation for individuals or stakeholders having the resources or capacity to undertake independent technical review of project information.
- Page 9, Current EA Guidelines: in this section, CNSC staff assert that since 2004, the Commission has made no significant changes to either the scoping information or the guidance contained in the Screening EA Guidelines for most of the CNSC's EAs. Further, Appendix A (page 47) citing CMD 07-H15 asserts that no changes were made to the scope or guidance for the proposed SEU CANDU fuel production at Zircotec's Port Hope facility in 2007. This assertion is not correct. In fact, Attachment 4 to CMD 07-H15, dated June 22, 2007, shows that through comments on the Draft EA guidelines, the Municipality of Port Hope achieved three changes in the Guidelines (in addition to correcting one typographical error). Through this process, the Municipality ensured that predicted doses to members of the public (not just to workers) would be calculated and presented; that the requirements for evaluating transportation of SEU and finished fuel bundles would be defined; and the circumstances surrounding "delegation" of the EA study by CNSC to Zircotec were clarified. In addition, the CNSC clarified that the VECs, pathways, and matrix of interaction listed in the draft EA guidelines are only examples and that the actual VECs, pathways, and interactions in the EA would be finalized later (when the Project Description and description of the existing environment were finalized). These changes were not trivial, and lead Jacques Whitford to believe that comments received from stakeholders on the EA Guidance documents can be meaningful, and can contribute to better overall EA practice.
- Page 9, Current EA Guidelines: it is asserted that "the combined public participation and hearing process for a Commission decision on EA guidelines currently takes between 140 to 220 days". This statement is very misleading, since the time line referred to includes time to post the EA on the CEA Agency registry, preparing the scoping document, EA Guidelines, public consultation, and the Commission decision, but gives the impression that this "delay" is caused by an unnecessary public consultation period which in fact allows for only 30 days for the public to comment.

- Page 10, Diagram: the diagram should identify the current opportunity for public comment on licensing, as it does for the two main opportunities during the EA.
- Page 11, Strengths of Current Process: the second paragraph contains in one sentence two ideas that do not appear to be connected – that there is a high level of public involvement in screenings, and that CNSC staff's strong review of EA technical information leads to better environmental planning. Is something missing here, or should these be two separate sentences, and possibly two separate paragraphs?
- Page 11, Lack of Flexibility of Process: this paragraph decries the long timelines for some EAs (those of low complexity or with few environmental interactions), but does not address the core issue (identified above with reference to Appendix D, pages 57 to 59), that proponents themselves are often responsible for these delays, either through delays in submitting technical studies, or through lengthy iterations with CNSC staff as these studies are reviewed. These delays cannot with validity be attributed to public involvement.
- Page 11, Resources: It appears that proponents have informed CNSC staff that many small projects are not initiated or are postponed because "the CNSC's EA process is onerous from a time and resources perspective". However, the burden of preparing EA guidelines and Screening Reports that are made available for public review, as well as the burden of responding to comments received from members of the public in accordance with Section 16(1)(c) of the *CEAA*, rests with CNSC staff. Therefore, the burden of time and resources identified by proponents must logically be associated with the preparation of technical studies, and the back-and-forth review process that these documents undergo between the proponent and staff.
- Page 12, Public Participation: it is asserted that CNSC staff and the Commission "typically receive few or no comments on the majority of small projects at the EA stage, and in some cases, public hearings ... have attracted very little attention". This statement may be misleading. A review of the CNSC website (July 14, 2008) reveals that there are 25 active screenings on the record. Of these, 8 were initiated by AECL at Chalk River where there is a very large exclusion zone, and the local communities of Chalk River and Deep River are essentially "company towns", with a highly informed population and a high level of direct and indirect employment with AECL. In addition, 7 screenings relate to active uranium mining sites, or mines undergoing remedial activities, in Saskatchewan and Ontario. It would be more instructive and meaningful to provide information on the level of public interest and involvement for the 10 screenings presently ongoing in the communities of Halifax, Blind River, Kanata, Peterborough, Pickering, Port Granby, Port Hope, and Tiverton where the two factors of an embedded population and/or the remoteness of the facility are less significant.
- Page 12, Public Participation: it is stated that "for a large number of complex screening-level EAs, comments ... at the EA Guidelines and ... Screening

[stage] ... are similar ... to those filed as hearing interventions”. This statement denigrates the thoughtful and responsible comments filed by many interveners that are specific and relevant to each stage of the process. Further, as will be elaborated on below, the Municipality of Port Hope and many other interveners have had to submit questions more than once due to dismissive treatment by CNSC staff.

- Page 12, Summary of Other Issues: it is stated that there are presently 3 Commission hearings and 5 public participation opportunities per project, regardless of complexity, for a total of 5 to 9 months for consultation and comment review. However, in practical terms, members of the public and other interveners generally have 3 windows of 30 days each to provide comments on the EA Guidelines, Screening Report, and Application for License or License Amendment. Importantly, the time frame of 5 to 9 months, which includes the time required for CNSC staff to respond to comments received from members of the public in accordance with Section 16(1)(c) of the *CEAA*, would only be taken up when a large volume of comments was received. In cases where there is truly a low level of public interest, the time committed to public participation would scarcely exceed 90 days. Again, public participation is not the cause of long timelines in screenings, except possibly where public interest is high.
- Page 12, Summary of Other Issues: it is asserted that there has been “low or no public interest ... for smaller-scale projects”, citing two AECL projects at Chalk River. As noted above, the local population near CRL is protected by a very large buffer zone, and has the benefit of being generally well-informed by virtue of the “company town” status of Chalk River and Deep River. The relative lack of public interest in these projects should not be used as a basis for arguing that screenings in general do not merit public involvement.
- Page 13, Current Approach Table: this table is misleading because many of the activities that are portrayed as being sequential are actually overlapping; moreover, the representation that public participation periods for the Guidelines and the Screening Report last from 40 to 75 days each is misleading, since the public actually has a window of only 30 days between these documents being issued, and the deadline for filing comments with the CNSC.
- Page 15, Outcome of Initiatives: the first bullet states one aim of the initiatives is to “adjust the CNSC’s screening EA process such that its rigour is commensurate with the complexity of the proposed project. Jacques Whitford suggests that the word rigour should be reconsidered. All screenings should be equally rigorous (in the sense of scientific and technical validity). Possibly this bullet should be reworded to replace the word rigour with the word “scope” or “complexity”.
- Page 15, Outcome of Initiatives: the last bullet states the aim of enabling the CNSC to meet its timeline commitments and fulfill the requirements of the Government of Canada on streamlining regulation. The Municipality of Port Hope should support this goal.

- Page 16, New EA Decision-Making Process: a streamlined process that facilitates decision making is evidently desirable. However, it has been shown above and is evident from a thoughtful reading of Appendix D that public participation is not the main impediment to effective decision making, and should not be compromised as the new process is developed.
- Page 18, Smaller or Lower-Risk Projects: it is argued that such projects “typically have very few or no project-environment interactions, and very low levels of public interest, if any at all”. These conclusions should not be pre-supposed.
- Page 18, Criteria for determining Lower-Risk Projects: this Table fails to consider the magnitude or consequences of potential environmental effects. This should be central to deciding whether or not a project is of a lower risk. It is suggested that a new bullet be added to the second box as follows to address this deficiency:
 - *The potential environmental effects of the project, including those that may arise as a result of accidents or malfunctions, could not be significant, even without mitigation, or the application of proven or codified mitigation.*

The first bullet is not a relevant determinant. The fact that a project is multi-jurisdictional has nothing to do with the potential for environmental effects. It is a reflection of process complexity only. The second and third bullets will generally be “givens” for an existing licensed facility, and therefore should carry no weight.

- *The proposed project does not introduce any new project-environment interactions that do not already exist, and are well understood and easily mitigated with proven technology.*

The sixth box (Aboriginal consultation) cannot be determined at the early scoping stage of an EA without consultation with Aboriginal people. Staff at the CNSC or the Commission cannot make this determination except through consultation. This is not a practical or reasonable screening tool. This criterion would have the effect of causing inordinate delays while potentially affected Aboriginal people were consulted. Consultation with the Aboriginal community in respect of projects should be in relation to decisions that are made that would enable a project to proceed, rather than process scoping decisions.

- Page 20 and 21, Criteria for Public Participation: the second box should be amended to more broadly describe the threshold:
 - *There is a history of involvement and interest demonstrated by some stakeholders.*

This amendment would allow members of the public and other stakeholders to officially register their interest with the CNSC, to be apprised of any project within their geographic area or jurisdiction, and afford them the

opportunity to decide whether and when they wish to be consulted. The table of elements that could trigger public participation needs further amendment. The fourth box is unreasonable. It suggests that the presence of significant adverse environmental effects would be a threshold for public consultation. This bar is too high, and would require an EA in any case before the significance determination could be made. Even more importantly, both the fourth box (significant adverse environmental effects) and the sixth box (the significance of the environmental effects of the project is uncertain) would require the Minister to refer the project to Panel Review. Clearly these thresholds for public consultation are unreasonably high. Jacques Whitford would strongly recommend the following wording to replace the fourth box with a more meaningful threshold that is protective of the public interest:

- *Public participation is not necessary if the potential environmental effects of the project, including those that may arise as a result of accidents or malfunctions, could not be significant, even without mitigation, or the application of proven or codified mitigation.*

This would more protective of public interest in that only those projects where environmental effects were inconsequential or where standard, well-known mitigation could be implemented so that there is no risk of significant environmental effects. In this way, the onus would be on CNSC staff (and the proponent) to demonstrate that environmental effects are easily mitigated and/or inconsequential. This could be achieved by the filing of a Project Description to initiate the EA with information that would support this determination.

The fifth box should refer to “cumulative environmental effects”. The word “impact” is not defined in the *CEAA* and the CNSC should reflect the language of the governing legislation.

The sixth box, as noted, would require the Minister to refer the project to a Panel Review, and would be an unreasonable threshold for public consultation.

- Page 22, Current Hearings for EA Decisions: the two bullets at the bottom indicate how CNSC staff proposes to change the current decision making process, however, it is unclear from the two bullets whether there will be a hearing for the EA decision on a smaller or lower-risk screening.
- Page 22, Decision Table: this decision-making process fails to consider or elaborate upon the process requirements of the *CEAA*. For example, there is nothing to address the process required for the filing of a project description to initiate the EA process and federal coordination. This process overlooks the federal coordination process or the role of FEAC in multiple responsible authority or inter-jurisdictional EA. What happens and how are these process issues administered?

Decision 2 does not accurately reflect the discretionary decisions that can be made in respect of Section 16(1). Sections 16(1)(a) to (d) are mandatory factors that must be considered in any EA under the *CEAA*. No decision is to be made in respect of those subsections. However, there is discretion under Section 16(1)(e) that the responsible authority can exercise to identify additional factors to be considered in the EA beyond the mandatory considerations. Decision 2 should be amended to reflect the legislation.

The Table fails to include the decisions that are required under Section 38(1) of the *CEAA* that requires the responsible authority to consider the need for a follow-up program pursuant to a decision under Section 20(1)(a). This is an important consideration for the Municipality given the sensitivity of nuclear projects within its boundaries and the need to undertake follow-up to verify environmental effects predictions and the effectiveness of mitigation. This decision should be included in the decision table.

Decision 5 identifies the important fact that the CNSC and any other responsible authorities can delegate any part of the screening. The described recommended processes fail to fully take advantage of this potential. For example, the Integrated Approach and Streamlined Approach diagrams on pages 31 and 41 show that the CNSC staff intends to prepare the Screening Report. If the CNSC intends to improve efficiency, it would be possible to take advantage of the proponent's interest and capacity to prepare the Screening Report (*i.e.*, delegate its preparation under Section 17). Reducing staff workload will improve the regulatory timelines and mitigate staff resourcing issues that contribute to a lack of efficacy in process. The CNSC would be better advised to issue a standard template and guidance on how to prepare a smaller or lower-risk Screening Report to meet its requirements.

- Page 23, Section 2.3, and Page 26, Section 2.4: the use of the term "Scoping Information Document" is confounding. We would recommend Scoping Document or Scoping Determination or Scope Determination. It is not "information" but rather the results of scoping that is intended to be presented. The CNSC and other responsible authorities are articulating scoping decisions mandated under the legislation and also determining how the *CEAA* is triggered and at what level. This issue is noted again on page 26. On page 26 there should be some reference to the outcome of federal coordination and how the *CEAA* was triggered.
- Page 23, Points 1 to 4: there is no indication in this section of the point in time that project information will be "posted" to the *CEAA* Registry or on the CNSC website, nor is there any indication or commitment that the Scoping Information Document will even be made available to the public in cases where CNSC staff have determined that there is no public interest. There must be an unqualified commitment from the CNSC staff and Commission that these materials will be made available to the public in a timely way, in order that the public can identify their concerns, if any, to the CNSC pursuant to Section 16(1)(c) of the *CEAA*.

- Page 24, Point 2: there must be a commitment from the CNSC staff and Commission that the full Screening Report will be made available to the public, with a minimum 30 day period for members of the public to identify their concerns, if any, to the CNSC pursuant to Section 16(1)(c) of the *CEAA*. Point 4 clearly indicates that CNSC staff presently advocate that the Screening Report will only be made public after the CNSC Commission has made its EA decision. This is unacceptable.
- Page 25, How is Scoping Information Developed: as written, the second bullet regarding how scoping information is developed is not an accurate reflection of the legislation. The need for a follow-up program must be considered for a screening under Section 38(1). The requirements of a follow-up program are not a mandatory factor for screening reports. Should a responsible authority wish to include a requirement to consider the requirements of a follow-up program the authority to do so must be derived from Section 16(1)(e).
- Page 26, Content of New Scoping Document: the bullets in this section depict the information to be included in the new Scoping Document, but omit some important points. Presumably the Project Description as submitted by the proponent should be provided. There should also be a clear articulation of how it was determined that the proposed activity represented a Project under the *CEAA*, and whether it was of a type identified on the inclusion or exclusion lists, or the Comprehensive Study List Regulations.
- Page 27, Section 2.5: the CNSC needs to be careful not to escalate the minimum requirements of a screening-level EA through the publication of guidance that has the tendency to be broad. Scoping for an EA should be focused on determining what it is appropriate to assess in the EA. Such guidance in other agencies such as the draft project description guidance of the MPMO has the tendency to request the “kitchen sink” approach to EA. Efficient or effective EA is achieved through RAs intelligently and transparently discharging their discretionary duties. In that regard, a focus for the CNSC needs to be on how it exercises its discretion to include additional factors under Section 16(1)(e) and limit the scope of the factors under Section 16(3), carefully considering the comments it receives from the public. The Municipality of Port Hope should encourage the CNSC to focus its guidance on providing the information necessary to make good and transparent scoping decisions that focus the EA on the issues important for managing the potential environmental effects of the Project.

Further in this section is the use of the term “Environmental Impact Statement” to describe the proponent’s EA. This term has the implication of robust panel-like EA documentation that may not be warranted for a smaller or lower-risk screening. The use of “EA Information” might be less expansive. The Municipality of Port Hope should encourage the CNSC to keep its documentation focused. Many interveners do not have the resources to review unnecessarily complex EA documents.

- Page 28, Integrated Approach for Complex Screenings: this section makes reference to Panel Reviews and how the integrated approach is equivalent. This statement is alarming. It suggests that CNSC views complex screenings in a manner equivalent to a panel review. This seems to be an expansive view that is not reflect of the intent of the legislation. The *CEAA* does not require a comprehensive study or a review panel for a complex screening. Why is the CNSC supporting such a view? Conversely, the last section on Page 28 could be read as a statement from CNSC staff that any project short of a candidate for Joint Panel Review will be treated as a smaller or lower-risk project, in order to avoid the inappropriate spectacle of a screening being treated in a manner equivalent to that of a Joint Panel Review. If this is the case, then there will be a complete loss of transparency and public involvement in the majority of CNSC business. This is not acceptable.
- Page 29, Commission Decision Process: it would appear that the first Commission decision (*CEAA* requirements based on the Scoping Information Document) would be made by the Commission without public input. The Second Commission Decision would be made in a public hearing, but it is unclear whether, or when, the public would have access to the EA Screening Report in order to make their concerns, if any, known to CSNC staff or the Commission. This is a matter of grave concern. For example during the review process for the Cameco SEU blending project (October 2005), the Municipality of Port Hope, in a written submission on CMD 05-H30, identified four serious deficiencies in the EA Screening Report, prepared by CNSC staff based on information provided by Cameco, and submitted by CNSC staff to the Commission in CMD 05-H30 with a recommendation that it be approved. These were that:
 - *The analysis of environmental effects was not consistent with the requirements of the CEAA, did not appear to have followed the process required by the EA Guidelines, and was not consistent with good EA practice, as outlined by the Canadian Environmental Assessment Agency.*
 - *The EA did not contain required information with respect to the potential cumulative health effects of uranium as a chemically toxic substance.*

These two issues related to the content of the EA; the remaining two issues related to the identification of mitigation for potentially significant environmental effects (*i.e.*, provision of security in the community; and provision of emergency services and fire fighting capacity) which CNSC staff proposed to defer until licensing. The Municipality was concerned that mitigation for potentially significant environmental effects must be identified at the time of the EA decision. The Cameco application for a license amendment to permit blending of SEU was subsequently withdrawn, and the project has not been revived. The broader lesson is that CNSC staff are not infallible, and that interventions from the public and other stakeholders can be

substantive and may serve to ensure appropriate decisions are made in the EA process.

- Page 31, Diagram of Integrated Approach: it is unclear from the diagram whether the public will have the opportunity to see and comment on the proponent's EA technical studies and/or licensing document. Similarly, it is unclear whether or when the public will be allowed to see the EA Screening Report prepared by CNSC staff. The diagram should clearly show public involvement opportunities and timelines for review and provision of comments.
- Page 32, When Not to Use: it is unclear whether any public involvement opportunities will remain in the "present" process should the proponent elect not to use the Integrated Approach.
- Page 34, Public and Other Stakeholders: it is suggested that should members of the public and other stakeholders be granted "intervener" status at a public hearing, they would have the opportunity to provide comments on both the EA Screening Report and the License Application Assessment Document at the same time. Presumably this would take place during Step 12 in the Table presented on Page 36, although the public would have only 30 days to provide comments (the window of 40 to 75 days includes other activities of CNSC staff in addition to the public comment period). Although on Page 34, this is presented as an advantage (since it "would make for an efficient public consultation process") the advantage would not be felt or appreciated by members of the public, since they would have the added burden of reviewing more information during the 30 day public comment period. In addition, the integrated process would provide members of the public with only a single opportunity to address the CNSC Commission directly. Under the present system, questions asked at a hearing are often left unanswered. For example at the recent (June 12, 2008) licensing hearing on Zircatec's Application to Produce Two New Types of Nuclear Fuel at its Fuel Fabrication Facility in Port Hope (CNSC Ref. 2008-H-10) the Municipality of Port Hope asked CNSC staff the following question:

"Our main point of concern is that there is nothing in the Zircatec submission, or in the CNSC Staff submission, or in the proposed changes to the Operating License, about the eventual decommissioning of the facility or the Preliminary Decommissioning Plan (PDP). However, the CNSC Staff response to the Municipality of Port Hope intervention on the Draft EA Screening Report (see Comment MPH-1 in Appendix C of the EA Screening Report) stated clearly:

"Decommissioning is not within the scope of the assessment; however, the preliminary decommissioning plan for the facility will require an update during the licensing phase to include the new equipment and operations in the facility."

Therefore, the Municipality of Port Hope asks CNSC Staff when or where will the update to the PDP be filed as part of the present licensing phase? If the PDP will not be updated at the present time, can CNSC Staff explain why the update is not required, in light of their earlier statement?"

The hearing transcript shows that this question was not answered.

- Equally importantly, the above exchange identifies a alarming deficiency in project scoping and guideline preparation on the part of CNSC staff. Section 15(3) of the *CEAA* states that "where a project is in relation to a physical work, an environmental assessment shall be completed in respect of every construction, operation, modification, decommissioning, abandonment or other undertaking in relation to that physical work that is proposed by the proponent or that is, in the opinion of ... the responsible authority ... likely to be carried out in relation to that physical work". CNSC staff erred in stating that "decommissioning is not within the scope of the assessment", since Section 15(3) requires it to be considered in the EA. More properly, CNSC staff should have included decommissioning within the scope of the project, but exercised the RA's discretion under Section 16(3) to limit the scope of this factor to the submission of a revised PDP for the facility that would address any new decommissioning requirements. Errors of this type on the part of RAs have in the past led to legal challenges of projects under the *CEAA*. There clearly needs to be opportunity for the public to intervene when staff would appear to be making a determination that is not in keeping with the requirements of the law.
- Page 36, Efficiency Gains: the timelines provided in the Table are misleading in two ways. First, public participation in the process is portrayed as requiring up to 75 days for each of two possible opportunities. However, the public comment windows are no more than 30 days each. If there is high public interest, the by definition, the consultation is worthwhile. If there is low public interest, then these steps will barely exceed the 30 day windows.
- Page 40, Public Participation: the first paragraph reiterates that lower-risk projects could undergo a streamlined EA approach since they are "by definition of very low public interest, or none at all (in the opinion of CNSC staff). We contend that members of the public should always be given a meaningful opportunity to register their interest in a project. The second paragraph reiterates that the criteria established in Section 2.5 of the document would be used to determine the level and need for public participation. We have already provided comment on the adequacy of these criteria, and the need to establish a realistic "bar". The third paragraph indicates that "should CNSC staff become aware that the project was drawing some public interest ... the Screening Report would be made available for public comment. Clearly, in the routine course of events, these screening reports would not be made available, and one wonders how, under the proposed system, members of the public could become sufficiently informed about a project to articulate their concerns. The fourth paragraph is illogical,

since it says that “public comments received on the scoping information or on the EA Screening Report will be included in Staff’s report to facilitate the Commission’s decision ...”, when in the routine course of events, the public will apparently not have access to these documents.

- Page 41, Streamlined Approach diagram: the process, and the diagram, should be modified so that members of the public have timely access to key documents prepared as part of the screening process. There must be public access to the Scoping Document; to the EA Screening Report, and to the Licensing Documentation, and the public must have sufficient time (*i.e.*, not less than 30 days) to articulate any comments or concerns to CNSC staff and the Commission.
- Page 42, Efficiency Gains diagram: this diagram is troubling because under the streamlined approach there will be no opportunity for public participation on the Scoping Information Document, and a total of 0 to 30 days on the Screening Report. This is a concern because the current approach represents the 30 day public review period as taking from 40 to 75 days, the balance being time used by CNSC staff to manage the process. Is Box 12 under the Streamlined approach indicating that the public will in reality have less than 30 days to review the Screening Report (with some portion of the 30 day period allocated to CNSC staff to distribute information and to respond to comments received from the public)? Appendix B1 (page 52) shows the same compression of the public comment period (one opportunity of 0 to 30 days) in the Streamlined Approach.
- Page 43, First Recommendation: the Criteria for identifying smaller or lower-risk projects, and need for public participation have been commented upon already. Jacques Whitford believes that in particular, the threshold for identifying a low-risk screening should be very stringent. Regarding public participation, the threshold for identifying public interest and/or concern should be lower than presently advocated by CNSC staff.
- Page 44, Second Recommendation: it should be noted here that proponents may request not to be tracked into either the Streamlined, or the Integrated Approach, if their project is speculative, or if their timeline is long.
- Page 44, Third Recommendation: the Scoping Information Document should be posted on the CNSC website in a timely manner, so that members of the public can be informed about projects, and have the opportunity to register their interest to the CNSC staff and Commission.
- Page 44, Fourth Recommendation: there is ambiguity created by the notation that some projects under the Integrated Approach “may require” public participation; ideally this would be written as “do require”.
- Page 44, Fifth Recommendation: there is a clear articulation here and in the Fourth Recommendation that only projects that require a license amendment or a new license “may require” public participation. It would appear that projects that require an approval by CNSC staff under a license condition will not require public consultation; and that only some of the projects requiring a

license amendment will merit public consultation. The position advocated by CNSC staff goes too far in seeking to reduce or eliminate public participation in the EA and licensing processes. The majority of *CEAA* screenings undertaken by other RAs (such as Fisheries and Oceans Canada, Transport Canada, or Public Works and Government Services Canada), in response to “triggers” under the *Fisheries Act*, *Navigable Waters Protection Act*, or through funding or transfers of land, are truly of low public interest, generally involving entirely conventional construction or replacement of necessary infrastructure. In contrast screenings that arise under triggers through the NSCA by definition involve radioactive materials and/or nuclear facilities. Public interest and concern in such projects will always be higher than the level of concern in more conventional (*i.e.*, non-nuclear) projects. Therefore, the CNSC has a public obligation to maintain a higher standard of openness and responsiveness to public interest.

Summary

The CNSC is seeking ways to streamline the EA process for projects triggered under the NSCA (*i.e.*, generally projects that require a license amendment or a new license to operate for a nuclear facility). In doing so, CNSC staff have identified a new “streamlined approach” for screenings that it considers low-risk, and of little or no public interest; and a new “integrated approach” for screenings that do not meet criteria for entry into the streamlined approach. One feature of both approaches is that opportunities for public involvement will be eliminated or strongly curtailed.

The inappropriate identification of public involvement and the present hearings process as a key contributing factor to long timelines for completion of screenings under the CNSC is not justified. Evidence presented in the CNSC document (Appendix D) shows that the screenings having the longest timelines are delayed either by delays in the proponent providing technical information, or possibly by drawn-out iterative processes of information submission and review between the proponent and CNSC staff. Importantly, the claimed timelines for completing screenings are misleadingly presented, since (Appendix B) the regulatory clock is “stopped” during periods when the CNSC is waiting for information from the proponent, but the timelines presented in Appendix D and elsewhere in the text fail to take this highly relevant factor into account. Moreover, the long timelines claimed for hearings and public consultation activities are misleading because other activities would continue in parallel. In reality, public consultation activities in support of screenings do not account for more than a few short months of time in the overall process.

CNSC staff propose to standardize and curtail public consultation on the preparation of guidelines and scope determinations for screenings. Jacques Whitford has shown that information received from the Municipality of Port Hope has resulted in substantive changes to EA guidelines, and that guidelines prepared by CNSC staff as recently as 2007 may not be fully compliant with the requirements of the *CEAA*. It is suggested that public comment on the Screening Information Document should

remain an important opportunity for CNSC staff and the Commission to get feedback on and improve both these documents, and EA practice at the CNSC.

Notwithstanding these concerns, process improvements leading to more rapid approvals for projects that are genuinely of low risk and low public interest would be welcome, and Jacques Whitford has provided some recommendations to be considered that would, in our opinion, help to screen projects more defensibly into those that are low risk and those that merit public involvement. Of paramount importance, Jacques Whitford believes that the bar for considering public involvement should be set low, for two reasons. First, the projects for which the CNSC is RA are by definition projects involving radioactive substances and/or nuclear facilities. In this respect, these projects are qualitatively very different from screenings managed by other RAs, such as Fisheries and Oceans Canada, Transport Canada, or Public Works and Government Services Canada. Second and fundamentally, the CNSC has an obligation to the Canadian public to provide access and transparency in the regulatory process. Without these, the CNSC risks losing public confidence. The CNSC is moreover obliged, pursuant to Section 16(1)(c) of the *CEAA* to consider comments received from members of the public regarding any project (be it a screening, Comprehensive Study, or Panel Review), regardless of whether there is a formal public involvement process or not. Jacques Whitford would expect that taking these recommendations and other factors into consideration, a minority rather than a majority of screenings should be considered for the streamlined process, and that public involvement should remain a high priority for the CNSC.

Timely public access to key EA documents must be assured. The proposed process improvements provide little or no assurance that the Scoping Information Document, EA Screening Report, or licensing information will be made accessible to members of the public, or whether such access will be timely and allow members of the public to review the documents and provide feedback to the CNSC staff and Commission. On the contrary, there are indications in the proposed process improvement initiatives that such documents may not be available, or may only be made available to the public after the EA decision has been rendered. This would be unacceptable, and inconsistent with the intent of the *CEAA*. Jacques Whitford has shown, contrary to the positions stated by CNSC staff in the document, that comments received from members of the public are relevant to the scoping process. Therefore, it is of the utmost importance that members of the public are assured timely access to, and opportunity to provide comment on, both the Information Document, and the EA Screening Report and Licensing Recommendations, under the proposed streamlined and integrated approaches for screenings.

As a final note, the document does not address intervener funding for participation in the CSNC process for screenings. Intervener funding is not provided for screenings under the *CEAA*, however, the proposed process improvement initiatives of the CNSC will differentiate between smaller and lower-risk screenings, and complex screenings that require an integrated EA process that in many respects resembles the process afforded to Comprehensive Studies. Under this scenario for complex

screenings, it may be reasonable for the CNSC to provide, or to encourage proponents to provide, access to intervener funding in order that members of the public and other stakeholders can undertake meaningful review of the technical EA and licensing documents, particularly as the period for review of these documents will be compressed into a single window of 30 days for public comment.

Closing

We trust that the information will be helpful to you. Please do not hesitate to contact me should you have any questions.

Sincerely,

JACQUES WHITFORD

ORIGINAL SIGNED BY

Malcolm Stephenson, Ph.D., Principal
Project Manager

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