

From: [Kerrie Blaise](#)
To: [Consultation \(CNSC/CCSN\)](#)
Subject: Reply from CELA - RegDoc 1.1.5 Small Modular Reactors
Date: November-20-18 10:52:31 PM
Attachments: [CELA - Consultation on RegDoc 1.1.5 SMRs REPLY.pdf](#)

To whom it may concern,

Please see attached for the Canadian Environmental Law Association's reply to the comments received on RegDoc 1.1.5 for Small Modular Reactors.

Thank you for this comment opportunity.

Kerrie

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via email cnsc.consultation.ccsn@canada.ca

November 20, 2018

Re: Reply to Comments Received for the Consultation of *Draft RegDoc-1.1.5 Licence Application Guide: Small Modular Reactor Facilities*

I. OVERVIEW

This is the reply of the Canadian Environmental Law Association (CELA) to the submissions filed with the Canadian Nuclear Safety Commission (CNSC) in relation to its consultation on RegDoc-1.1.5 “Licence Application Guide: Small Modular Reactor Facilities” (herein “RegDoc 1.1.5”).¹

CELA is a public interest law group founded in 1970 for the purposes of using and enhancing environmental laws to protect the environment and safeguard human health. Funded as a specialty legal aid clinic, CELA lawyers represent low-income and vulnerable communities in the courts and before tribunals on a wide variety of environmental and public health issues.

CELA has participated in various administrative and legal proceedings under the *Nuclear Safety and Control Act*, *CEAA 2012* and its predecessors, *CEAA 1992* and the *Environmental Assessment and Review Process Guidelines Order*. Based on this experience, CELA has carefully considered the comments provided during the consultation on the draft RegDoc 1.1.5. Therefore, this reply not only builds on CELA’s primary submission,² but replies to the comments provided by other public intervenors and industry.

¹ CNSC, “REGDOC-1.1.5 Licence Application Guide: Small Modular Reactor Facilities,” online <https://nuclearsafety.gc.ca/eng/acts-and-regulations/consultation/comment/regdoc1-1-5.cfm> [Draft RegDoc]

² Canadian Environmental Law Association, “Comments on RegDoc 1.1.5” (28 Sept 2018) online: <http://www.cela.ca/Comments-SMRLicensingGuide>

II. REPLY TO THE GREENPEACE SUBMISSION

In their submission, Greenpeace argues that the CNSC has been lobbying the federal government to exclude SMRs from assessment under the proposed *Impact Assessment Act* (IAA). Significantly, an Information Note prepared for the President of the Commission dated April 12, 2018, obtained through an Access to Information request notes that “the CNSC is recommending that a threshold be established for power reactors so that small units are not subject to an impact assessment. The number of nuclear project (sic) subject to IA will likely be very limited in the foreseeable future.”³

In reply, CELA submits that the CNSC, as quasi-judicial body, should not be weighing in on matters of policy. First, as a quasi-judicial body, the CNSC does not have unfettered discretion and any discretionary decision must be based on, and serve the purposes of, its governing statute the *Nuclear Safety and Control Act* (NSCA).⁴ Taking a position on the designation of SMRs under the proposed *Impact Assessment Act* and advising the Minister of Environment and Climate Change on matters of sustainability, which the CNSC does not have expertise, is not within the stated purposes of the CNSC under the NSCA.⁵

Second, to ensure the public’s trust in the tribunal process, it is crucial that the CNSC maintain its independence as neutral arbiter of the matters within its jurisdictions.⁶ Intervening in matters of federal environmental law and policy, is not one.

Third, Greenpeace notes that when it asked the CNSC to release its detailed requests and reasons for exempting SMRs from the IAA, the disclosure request was denied. In reply, CELA submits that the CNSC is not acting in a transparent manner and given that all comments received regarding the *Impact Assessment Act* are posted to a public registry, CELA concurs

³ Greenpeace, “Comments on RegDoc 1.1.5” (28 Sept 2018) online: <https://www.nuclearsafety.gc.ca/eng/pdfs/REGDOC-comments-received/Comments-REGDOC-1-1-5-PC-Greenpeace.pdf>

⁴ Blake, Sara, *Administrative Law in Canada*, 6th ed (Toronto: LexisNexis, 2017), p 106

⁵ Per s. 9 of the *Nuclear Safety and Control Act*, 9 The objects of the Commission are

(a) to regulate the development, production and use of nuclear energy and the production, possession and use of nuclear substances, prescribed equipment and prescribed information in order to

(i) prevent unreasonable risk, to the environment and to the health and safety of persons, associated with that development, production, possession or use,

(ii) prevent unreasonable risk to national security associated with that development, production, possession or use, and

(iii) achieve conformity with measures of control and international obligations to which Canada has agreed; and

(b) to disseminate objective scientific, technical and regulatory information to the public concerning the activities of the Commission and the effects, on the environment and on the health and safety of persons, of the development, production, possession and use referred to in paragraph (a).

⁶ The Society of Ontario Adjudicators and Regulators, “Code of Conduct” online: <https://soar.on.ca/document/code-of-conduct>

with Greenpeace in requesting that all of the CNSC's comments on this subject be immediately released and their content reviewable to the public.

Fourth, Greenpeace's submission continues that by encouraging SMRs to be exempt from impact assessments, the CNSC is reducing the potential for public scrutiny of the deployment of SMRs, and depriving Canadians of information on the potential impacts of SMRs in their community. In CELA's view, the CNSC has narrowly viewed the development and licensing of SMRs in Canada as a matter only involving the proponent and regulator. This view fails to recognize the wider range of persons and civil society who may be impacted by the CNSC's decision-making. The CNSC does not have a monopoly over the public interest and it must ensure the inclusion of the broader public.⁷

In Summary, Greenpeace's submission has disclosed documents through Access to Information that were not previously available to CELA at the time of our first comments on the RegDoc 1.1.5. Therefore, as a result of the CNSC's decision to pre-judge the need of SMRs to undergo environmental assessment, prior to any assessment of sustainability (and related considerations of socioeconomic, health and environmental impacts), demonstrates the CNSC has not initiated the development of RegDoc 1.1.5 from an independent and neutral position. Instead, the CNSC's position on SMRs and accompanying position that they should, and will be, limited from the proposed *Impact Assessment Act* "in the foreseeable future" undermines this RegDoc's development. As a result of the CNSC's failure to exercise their discretion in a matter which advances the purposes of their governing and by seeking to limit opportunities for the public's review on matters of public importance, CELA submits RegDoc 1.1.5 should be rescinded and its development halted.

III. REPLY TO THE CONCERNED CITIZENS OF MANITOBA, GREENPEACE AND NORTHWATCH SUBMISSIONS

In their respective submissions, the Concerned Citizens of Manitoba, Greenpeace and Northwatch request that SMRs be subject to environmental assessment. In reply, CELA notes that it concurs and wishes to underscore the importance of an environmental assessment under Canada's environmental assessment legislation, the *Canadian Environmental Assessment Act, 2012* (or the proposed *Impact Assessment Act*).

First, the *NCSA* is a regulatory statute and not a federal environmental assessment law. Therefore, there are a number of fundamental differences between it and a review conducted

⁷ Demarco, Jerry and Muldoon, Paul, "*Environmental Boards and Tribunals: A Practical Guide*" 2nd Ed (Toronto: LexisNexis, 2016) p 34

under *CEAA 2012* or the *IAA*. For instance, s 19 of *CEAA 2012* and s 22 of the proposed *IAA* requires the alleged need and purpose of the proposed project to be considered. Likewise, federal environmental assessment legislation also requires alternative means of carrying out the project be reviewed.⁸ Second, there is no equivalent purpose in the *NSCA* that requires that projects foster sustainability, nor consider the project's effects on environment, health and socio-economic conditions.⁹ These threshold issues, which are fundamental to EA law, are not considered by the CNSC during its *NSCA* licensing hearings.

IV. REPLY TO THE NORTHWATCH SUBMISSION

In their submission, Northwatch states that given the novelty of the reactor technology, using a graded approach to regulation is not appropriate. Instead, Northwatch recommends that SMRs be subject to a rigorous course of regulatory scrutiny, with full transparency and public involvement. In reply, CELA concurs with this recommendation and submits that a "graded" regulatory approach could reduce the efficacy of safeguards for human health and the environment.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



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⁸ Bill C-69, *Impact Assessment Act*, s 22

⁹ *Ibid*, s 6