



Canadian Nuclear
Safety Commission

Commission canadienne
de sûreté nucléaire

Record of Proceedings, Including Reasons for Decision

In the Matter of

Applicant Saskatchewan Research Council

Subject Request for Exemption from the *Cost Recovery Fees Regulations* for the SRC SLOWPOKE-2 Reactor

Hearing Date April 30, 2013

RECORD OF PROCEEDINGS

Applicant: Saskatchewan Research Council

Address/Location: 125 – 15 Innovation Boulevard, Saskatoon, SK S7N 2X8

Purpose: Request for Exemption from the Cost Recovery Fees Regulations for the SRC SLOWPOKE-2 Reactor

Application received: September 25, 2012

Date of hearing: April 30, 2013

Location: Canadian Nuclear Safety Commission (CNSC) 280 Slater St., Ottawa, Ontario

Members present: M. Binder, Chair

Secretary: M. Leblanc

Recording Secretary: S. Gingras

Request: Accepted

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1. INTRODUCTION

1. The Saskatchewan Research Council (SRC) has requested, pursuant to section 7 of the *Nuclear Safety and Control Act*¹ (NSCA), an exemption from the *Canadian Nuclear Safety Commission Cost Recovery Fees Regulations*² (CRFR) for its SLOWPOKE-2 reactor located in Saskatoon, Saskatchewan. The SRC's basis for this request is that there is essentially no difference in the nature of operations at the SRC SLOWPOKE-2 reactor from the activities of the other SLOWPOKE-2 reactors in Canada, which are not subject to cost recovery fees.
2. With its request for exemption, the SRC also submitted financial information concerning the operating costs and revenues of its SLOWPOKE-2 reactor. This information demonstrated that the SLOWPOKE-2's operation experienced financial shortfalls from 2001 to 2012.

Issue

3. In considering the application, the Commission was requested to decide, pursuant to section 7 of the NSCA and section 11 of the *General Nuclear Safety and Control Regulations*³ (GNSCR), if granting an exemption will not
 - a) pose an unreasonable risk to the environment or the health and safety of persons;
 - b) pose an unreasonable risk to national security; or
 - c) result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed.

Hearing

4. Pursuant to section 22 of the NSCA, the President of the Commission established a Panel of the Commission to review the application. The Commission, in making its decision, considered information presented for a hearing held on April 30, 2013 in Ottawa, Ontario. During the hearing, the Commission considered written submissions from CNSC staff (CMD 13-H101) and the SRC (CMD 13-H101.1), as well as an oral presentation from the SRC.

2. DECISION

¹ Statutes of Canada (S.C.) 1997, chapter (c.) 9.

² Statutory Orders and Regulations (SOR)/2003-212.

³ SOR/2000-202.

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

the Commission, pursuant to subsection 7 of the NSCA and section 11 of the *General Nuclear Safety and Control Regulations*, accepts the Saskatchewan Research Council's request for an exemption from the *CNSC Cost Recovery Fees Regulations* in relation to the operation of its SLOWPOKE-2 reactor located in Saskatoon, Saskatchewan. This exemption is effective from April 1st, 2013 forward, and is not retrospective.

3. ISSUES AND COMMISSION FINDINGS

3.1 Regulatory Considerations

6. CNSC staff reported that section 7 of the NSCA provides the Commission the authority to exempt any activity or person from the application of the NSCA, its regulations or any part thereof, and that section 11 of the GNSCR provides criteria that the Commission must consider before granting an exemption.
7. CNSC staff noted that section 2 of the CRFR provides criteria for excluding licensees from the application of the CRFR. CNSC staff added that the CRFR Regulatory Impact Analysis Statement⁴ (RIAS) provides insight on the application of cost recovery. The RIAS indicates that activities which are subject to cost recovery are those that "provide identifiable recipients with direct benefits beyond those received by the general public".
8. CNSC staff reported that the RIAS indicates that commercially operated research reactors and nuclear medical facilities will be charged fees as there is no policy justification upon which to base an exemption. The RIAS does point out that provincial and municipal governments that provide long-term management to protect the health and safety of persons and the environment, including management over abandoned contaminated sites, may be exempt from the CRFR as these organizations clearly provide a public service to society at large.
9. CNSC staff noted that, in the winter of 2012, the CNSC's fee exemption policy was subject to review by the House of Commons Standing Committee on Natural Resources. The Committee supported the current exemption policy. Although consideration was given to removing the exemptions entirely, it was acknowledged that there is a strong case for exemption for certain institutions on the basis that they provide a direct social benefit to the Canadian public. The approval of permanent funding in Budget 2012 confirmed that the current application of CRFR remain in line with government policy.

⁴ Canada Gazette Part II, Vol. 137, No. 13.

3.2 SRC's request

10. CNSC staff reported that, in 2010, the SRC asked the CNSC for granting an exemption from the CRFR stating that they operate in a similar manner to other SLOWPOKE-2 reactors. A combined legal and financial evaluation of the facts that were brought forward, including a Memorandum of Understanding signed between the University of Saskatchewan and the SRC, led CNSC staff to confirm that the SRC did not meet the definition of a fee-exempt licensee as defined in the Section 2 of the CRFR. CNSC staff informed the SRC that they could consider the following to meet the definition of a fee exempt licensee:

- SLOWPOKE-2 facility being owned by University of Saskatchewan (U of S) and SRC enter an agreement to operate the facility on their behalf; or
- SLOWPOKE-2 facility being owned by a not-for-profit organization that carries out research owned by an educational institution as defined in the CRFR.

CNSC staff re-examined the SRC's recent request for an exemption from the CRFR for its SLOWPOKE-2 reactor and came to the same conclusions.

11. The Commission enquired on the possibility of transferring the ownership of the SLOWPOKE reactor to the University of Saskatchewan. The SRC representative noted the complexity and the cost of transferring the licence to the University of Saskatchewan, and that the University is not comfortable with taking on the responsibility of operating a SLOWPOKE reactor without having the expertise in reactor safety, with the potential safety issues that might arise.

12. CNSC staff advised the SRC that, even if CNSC staff determined that the SRC did not meet the requirements as stated in Section 2 of the CRFR, only the Commission could exempt a licensee from these Regulations. Thus, if the SRC wished to further pursue this matter, it would have to proceed with a formal request to the Commission.

13. CNSC staff concluded that:

- The SRC's SLOWPOKE-2 operations are subject to cost recovery.
- The mandate of SRC does not meet the exclusion criteria in paragraphs 2(a) and 2(b) of the CRFR.
- The basis for the exclusion criteria remain valid and in line with government policy.
- Granting an exemption would not pose risks and failure of international obligations stated in paragraphs (a), (b), (c) of section 11 of GNSCR.

3.3 Activities at the SLOWPOKE Reactor and Cost to Operate

14. In its application letter, the SRC acknowledged that it does not meet the CRFR exemption criteria. However, the SRC argued that, while the Saskatchewan SLOWPOKE is the only SLOWPOKE subject to cost recovery in Canada, there is essentially no difference in the nature of the operations of the SRC and other SLOWPOKES operated in Canada. The SRC added that, as the sole reactor in the province of Saskatchewan, the SRC SLOWPOKE reactor represents the only such facility available for education, research, and training in Saskatchewan. The SRC donates free reactor and operator time to research projects of the University of Saskatchewan. Any revenues that SRC makes are reinvested within SRC, profits are not taken by individuals or third-party corporations. The SRC also noted that it receives significant allocations of public money from the government and is operated solely for the benefit of the general public.
15. CNSC staff reported that several for-profit and Crown corporations are subject to the CRFR, although they carry out activities similar to those performed by cost recovery exempted medical and educational institutions. Exemptions granted are primarily based on the mandate of the institutions, not on the activities carried out. CNSC staff expressed the view that providing an exemption under the CRFR as requested by the SRC would not be consistent with practice for other Crown corporations currently licensed by the CNSC, and would not be aligned with government policy on the 2012 exemption policy review.
16. The SRC stated that, even if the exemption from the CRFR was granted, the SRC SLOWPOKE would still have a net cost to operate. The SRC added that, due to the escalating cost recovery fees, it must make a decision to either shut down and decommission the reactor or transfer it to the University of Saskatchewan. The SRC believes that this transfer would entail considerable expense for the University, which ultimately would be borne by the general public. The SRC also argued that the SRC would be best placed to continue the safe operation of the reactor, rather than a new licensee with no operating experience.
17. The Commission asked for comments on the research and educational objectives of the SRC. CNSC staff commented that the two possible exemptions under the CRFR are specifically based on whether an institution is educational, or is a research organization which is fully owned by an educational institution. The SRC representative noted that the SRC is a provincial Crown Corporation, but that its activities are very similar to other SLOWPOKE reactors in Canada. If the ownership of the reactor was to be transferred to the University of Saskatchewan, the activities would not change and the reactor would be fee-exempt. The SRC representative added that they have very strong educational links with the University of Saskatchewan. The SRC representative stated that, in their view, they meet the intent of the CRFR since they are operating the reactor for the Province of Saskatchewan and are not making profit.
18. The Commission asked about the percentage of the operations at the SLOWPOKE

reactor that are used for teaching, training or research. The SRC representative responded that approximately 30 percent of its operations are dedicated to these purposes, and that it plans on making the reactor available to University of Saskatchewan students approximately 40 percent of a 40-hour week. The SRC representative noted that the reactor is used approximately 3 days per week, and that number is planned to increase with the activities of the new Fedoruk Centre, a research centre which is wholly owned by the University of Saskatchewan.

4. CONCLUSION

19. The Commission has considered the information and submissions from the SRC and CNSC staff. The Commission concludes that the conditions set out in section 11 of the GNSCR have been met. The Commission also concludes that, while the RIAS indicates that commercially operated research reactors should be charged fees, the activities related to research, training and education at the SLOWPOKE-2 reactor are not significantly different from the ones at the other SLOWPOKE reactors in Canada. Despite being a provincial Crown Corporation and being subject to the CRFR, the SRC does have an important educational and research part to its activities and is not making profit from operating the SLOWPOKE reactor.
20. Pursuant to section 7 of the NSCA, the Commission therefore exempts the SRC from the CRFR, effective April 1, 2013. This exemption is not retroactive.



Michael Binder
President,
Canadian Nuclear Safety Commission

MAY 09 2013

Date