



December 19, 2017

The Hon. Catherine McKenna
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The Hon. James Carr
 Minister of Natural Resources
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Dear Ministers McKenna and Carr:

RE: Federal Environmental Assessment Legislation: Role of the CNSC

Canadian Environmental Law Association

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We are collectively writing to request that you follow and implement the recommendations of the Environmental Assessment Expert Panel¹ in respect of the conduct of federal environmental assessments (EAs) of nuclear projects.

As you know the Expert Panel recommended establishing a new independent quasi-judicial authority, rather than having the Canadian Nuclear Safety Commission (CNSC) conduct EAs under the new regime. We strongly urge you to establish a single, independent agency or commission that has the authority and resources to manage – and decide – all assessments, including those in relation to nuclear projects. We submit that the CNSC’s role should be limited to its responsibilities as a regulator, and that it should provide technical advice and input into federal EAs of nuclear activities or facilities, but not as the agency responsible for the conduct of such assessments.

The Expert Panel concluded, based on many submissions and extensive in person testimony, that the federal major energy regulators have lost the trust and credibility of the public in respect of environmental assessment, and this includes the CNSC.

The Expert Panel properly found that:

The apprehension of bias or conflict of interest, whether real or not, was the single most often cited concern by participants with regard to the NEB and CNSC as Responsible Authorities...The apprehension of bias on the part of these two Responsible Authorities has eroded confidence in the assessment process (emphasis added).²

The undersigned groups submit that this well-documented erosion of public confidence cannot be remedied by the federal Discussion Paper’s proposal to have the CNSC (or National Energy Board) continue to conduct assessments under the new regime³.

In our collective view, the role of the CNSC in *de facto* promoting the nuclear industry (despite the removal of “promotion” as one of its objects), its lack of specific expertise in EAs (as opposed to regulation), its tendency to blur the lines and purposes between environmental assessment and regulation, and the close relationship between the regulator and industry in the nuclear sphere are all factors that clearly support separating the EA role from the regulatory role.

We understand that the CNSC has argued that it is a “life-cycle regulator,” and that it has particular expertise in relation to the highly technical aspects of uranium mining and milling, nuclear power production and other aspects within its regulatory purview. We submit that none of these factors logically

¹ Government of Canada, 2017, Expert Panel Report: *Building Common Ground A New Vision for Impact Assessment in Canada* <https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/building-common-ground.html>

² Expert Panel Report, page 49.

³ Government of Canada, *Environmental and Regulatory Reviews: Discussion Paper*, June 2017 <https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/share-your-views/proposed-approach/discussion-paper.html>

leads to the conclusion that the CNSC should also be responsible for conducting, managing, overseeing, and making decisions on EAs of nuclear projects.

As explained by the Expert Panel, EAs are distinct processes, with environmental planning purposes that differ considerably from regulation. Regulation is the process that is undertaken once a project is proceeding through licensing, operation, and ultimate decommissioning. This regulatory exercise is largely technical in nature, and requires strong expertise regarding the specific operating processes.

In contrast, environmental assessment is a planning process that requires consideration of a wider range of factors that include not only the impacts of proposed projects, but also include larger public interest matters, such as sustainability, need/alternatives analysis, intergenerational equity, cumulative impacts evaluation, and much else.

We note that the comprehensive expertise needed to properly conduct EAs is, for the most part, possessed by the current Canadian Environmental Assessment Agency (or its potential successor if established as per the Expert Panel recommendation). This expertise has been built over decades, and is applicable to the full range of environmentally significant activities that are (or should be) subject to federal EA requirements. This broad experience is applicable to mining, forestry, bridges, pipelines, nuclear power plants, and many other sectors. In our view, there is nothing so unique or inherently special about nuclear projects that they should not be subject to the same environmental assessment framework conducted by an independent agency under federal law.

In this respect, the Expert Panel correctly concluded that:

An authority that does not have concurrent regulatory functions can be better held to account by all interests than can entities that are focused on one industry or area and that operate under their own distinct practices. Second, regulation and assessment are two quite distinct functions that require different processes and expertise. Regulatory licensing typically focuses on determining the technical acceptability of a proposed project against the requirements set out in a governing piece of legislation, with a consequent emphasis on technical expertise and a tendency for the regulator and the regulated industry to be in regular contact and discussions. Assessment is a planning process that considers both technical and non-technical matters and engages in public review to select the best options. The scope of assessment is much broader and requires more diverse expertise, especially in consideration of the sustainability approach being proposed by the Panel. Even under the current regime, the narrow mandate of regulators prevents them from fully assessing projects in specific situations.⁴

In conclusion, we strongly urge your government to pass new legislation that establishes a single independent agency responsible for the conduct of all federal EAs. We agree with the Expert Panel that federal energy and resource regulators, including the CNSC, the National Energy Board, and offshore oil and gas boards, should not be given authority to conduct EAs, undertake substituted reviews, or establish or appoint members to panel reviews. Rather, their roles should be limited to the transparent provision of relevant information and technical expertise to the independent agency when required or requested.

⁴ Expert Panel Report, pages 50-51

We would be pleased to meet with you or to provide further information in respect of our submission. We look forward to your timely reply to this joint letter.

Yours very truly,



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