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March 21, 2014

Canadian Nuclear Safety Commission
280 Slater Street
P.O. Box 1046, Station B
Ottawa, Ontario K1P 5S9
CANADA
Via email: consultation@cnsccsn.gc.ca

Re: Opposition to restrictions on public participation proposed in *Discussion Paper DIS-13-02*

To whom it may concern,

We write to state our opposition to the proposed amendments to the Canadian Nuclear Safety Commission's (CNSC) Rules of Procedure to reduce public participation in Commission hearings. In our view, this proposal should be abandoned and instead replaced with initiatives to broaden and enable public participation in the oversight of Canada's nuclear industry.

In November 2013, the CNSC published *Discussion Paper DIS-13-02*. Based on recent restrictions on public participation carried out by the National Energy Board, this document proposes to amend CNSC regulations in order to restrict participation in future CNSC hearings to a "person who is directly affected by the carrying out of the designated project."

If implemented, this proposal could significantly limit participation in CNSC hearings. We do not believe this is in the public interest and could weaken nuclear oversight in Canada.

Notably, *Discussion Paper DIS-13-02* provides no tangible justification or evidence for limiting public participation other than claiming that current regulations are "somewhat vague" regarding what members of the public have an "interest" in any particular matter before the Commission.

We believe that these proposed limitations on public participation are contrary to lessons from the Fukushima disaster. It has been widely acknowledged (but not explicitly by the CNSC) that "regulatory capture" or "institutional failure" was the cause of the Fukushima disaster. The close relationship between Japan's nuclear regulator and Fukushima's operator created an uncritical and dismissive attitude that caused Fukushima disaster. Both Japan's nuclear regulator and Fukushima's operator were fully aware of the tsunami risk. Despite this, they did nothing about it.

To learn from Fukushima, we need to prevent - or at least mitigate - regulatory capture at the CNSC. It should be highlighted that the CNSC's review of the Fukushima disaster only considered the technical

causes of the disaster.ⁱ It did not examine existence of regulatory capture in Japan or how such conditions may exist in the Canadian context.

We believe increased public transparency and public participation is essential to avoiding the capture of Canada's regulator as happened in Japan.

It should be noted there are already significant barriers to public participation in CNSC licensing hearings. Some of these barriers include the lack of timely access to CNSC and licensee safety reviews and analysis, time restrictions on oral presentations, and the inability to directly question CNSC staff and licensees.

We request that Commission abandon the current proposal to limit public participation in CNSC proceedings. Aside from claiming that current regulations are 'somewhat vague' the CNSC has not provided sufficient reasons or evidence to justify limiting public participation.

On the other hand, the Fukushima disaster has highlighted the benefit of broadening and enabling public participation in CNSC proceedings. Broadened public participation and transparency will strengthen accountability and reduce the risk of regulatory capture at the CNSC. This should be the explicit goal of any future amendments to the CNSC's Rules of Procedure.

As well, the government has introduced a Bill C-22, *An Act respecting Canada's offshore oil and gas operations, enacting the Nuclear Liability and Compensation Act, repealing the Nuclear Liability Act and making consequential amendments to other Acts*. C-22 proposes to limit the liability of reactor operators in Canada to a mere \$1 billion. It also completely absolves companies that design or service Canada's reactors of responsibility - even if their negligence causes an accident. Bill C-22 *does not* provide operators and suppliers of oil and gas facilities similar protection.

Bill C-22 effectively transfers the risk of nuclear operations from the nuclear industry to Canadians. All Canadians thus have an interest in all matters before the CNSC.

We thus formally request enabling and broadening public participation be made an explicit goal of any future amendments to the CNSC *Rules of Procedure*. The current proposal should be abandoned.

We would be happy to provide input on any future proposal to enhance public participation requirements in the Rules of Procedure.

For example, the following proposals could help enable public participation:

- **Create two categories of oral presentations.** Recent Joint Review Panels used two categories – interventions and statements – to enable members of the public with different levels of expertise or concern to participate. Oral statements were limited to ten minutes while interventions could present for up to 30 minutes. These categories would allow longer time for members of the public seeking to make more in-depth presentations while allowing for shorter statements of public concerns.

- **Allow the public to make written interrogatories of CNSC staff and licencees.** Other regulatory agencies, such as the Ontario Energy Board, allow intervenors to make written interrogatories to acquire additional information or clarification before making their written submissions. Currently there is no formal procedure for intervenors to pose questions to licencees or CNSC staff.

Thank you for your attention in this matter.



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¹ Terms of Reference CNSC Task Force Review of Japan Nuclear Event, April 28, 2011. See: http://nuclearsafety.gc.ca/eng/pdfs/japan-earthquake/April-28-2011-CNSC-Task-Force-Terms-of-Reference_e.pdf