

February 14, 2019

via email: cnscconsultation.ccsn@canada.ca

Re: CELA's Comments on the Canadian Nuclear Safety Commission's KI Working Group draft Terms of Reference

To whom it may concern:

The Canadian Environmental Law Association (CELA) welcomes the opportunity to provide comments on the Canadian Nuclear Safety Commission's (CNSC) consultation on the draft Terms of Reference ("TOR") for the Potassium Iodide Pill Working Group (herein "KI Working Group").

We commend efforts by the CNSC to strengthen emergency preparedness, especially to vulnerable populations who are most at risk following a nuclear accident. The federal standard recognized in the CNSC's RegDoc 2.10.1 requires "...that particular consideration is given to sensitive populations such as children and pregnant women within the designated ingestion control planning zone." CELA submits that this statement must be interpreted in such a way that equal levels of protection are provided to all individuals within the Ingestion Protection Zone (IPZ). As currently implemented, vulnerable populations such as children, do not have consistent levels of protection across the province of Ontario. In our view, this discrepancy must be remedied through the outcomes of the KI Working Group. As currently drafted, the Working Group's Terms of Reference do not accomplish this objective.

While KI pills are already stockpiled in all schools within 50 km of the Bruce Power nuclear generating station, this standard has not been applied to the schools within the same radius of OPG's Pickering and Darlington nuclear power plants, where stockpiling in schools only occurs out to 10km. CELA reiterates its full support for the proactive stockpiling of KI in all schools within 50 km of any nuclear power plant.

CELA's recommendations to the CNSC are set out below. These comments build on CELA's related concerns about the sufficiency of emergency planning and preparedness, as highlighted in our recent submissions to the CNSC for the relicensing hearings of the Bruce and Pickering nuclear stations.

About Us

CELA is a non-profit, public interest law organization. For nearly 50 years, CELA has used legal tools to advance the public interest, through advocacy and law reform, in order to increase environmental protection and safeguard communities across Canada. CELA is funded by Legal Aid Ontario as a speciality legal clinic, to provide equitable access to justice to those otherwise unable to afford representation.

CELA has engaged in detailed research and advocacy related to the improvement of public safety and environmental protection by seeking improvements to nuclear emergency preparedness.

CELA frequently participates in legal proceedings involving the interpretation, implementation, and enforcement of statutes relate to environmental protection and often intervenes in its own right in proceedings involving issues of public importance and environmental significance. CELA has a lengthy history reviewing the sufficiency of emergency preparedness in the context of nuclear power plants¹ and has also been actively involved in discussions and consultations regarding the Province of Ontario's revised Provincial Nuclear Emergency Response Plan.²

Recommendations on the Draft Terms of Reference for the KI Working Group

1. *Amend the Working Group's purpose to reflect commitments made at public hearings*

CELA submits that the draft Terms of Reference do not reflect the commitment made by the CNSC during the Pickering Nuclear Generating Station (NGS) relicensing hearing to form a working group with the express aim of providing the Commission with a plan on how to implement emergency measures to vulnerable populations within the 50 km ingestion planning zone. Instead, the TOR characterizes the purpose of the Working Group as providing "clarity" with regards to existing plans.³

The commitment as made by Executive Vice-President and Chief Regulatory Operations Officer Ramzi Jammal to the Commission members at the Pickering NGS relicensing hearing was as follows:

[...] CNSC staff is recommending we establish a working group that encompasses CNSC staff, OPG, the Ministry of Health and the Chief Health Officer, and then other stakeholders in order to provide the Commission with a plan on the implementation of the requirement of 2.10.1, RD-2.10.1, and that we will be updating you with respect to the progress so that it will be clear to the responsible authority to deliver the KI pills when it is needed and then we will provide the Commission with the answers (emphasis added).⁴

We therefore recommend the following:

Recommendation No. 1 The background or preamble to the TOR should be updated to reflect the original intent and commitment of the CNSC. Rather than providing "clarity with respect to existing plans," the purpose of the Working Group must be "to devise a plan to implement" RegDoc 2.10.1

¹ Canadian Environmental Law Association, "Publications: Emergency Planning around Canadian Nuclear Plants," online: <http://www.cela.ca/test-emergency-planning-around-canadian-nuclear-plants>

² CELA, "Re: Discussion Paper on Planning Basis Review and Recommendations and List of Proposed Changes to the PNERP 2009" (28 July 2017), online: <http://www.cela.ca/sites/cela.ca/files/EmergencyPlg.pdf>

³ CNSC, "Draft Terms of Reference," Background

⁴ CNSC, "Pickering Hearing Transcript - June 24, 2018" p 316 - 317

section 2.3.4. This statement could also be added as a function of the Working Group in section 1 or in the deliverables outlined in section 5.

2. *Expressly reference civil society in the inclusion of the Working Group's "special committee"*

CELA has received an invite to be part of a special committee, known as the Advisory Committee to the KI Working Group, pursuant to section 4.3 of the TOR. To our knowledge, no other civil society organizations have been invited.

In lieu of the CNSC's commitment to include civil society in this process, we ask that it be made an express commitment within the terms outlined in section 4.3. This recommendation is in line with statements made during the 2018 meeting on the Regulatory Oversight Report for Nuclear Power Plants ("NPP ROR"), when Mr. Jammal confirmed to CNSC President Velshi that civil society organizations could be members of the advisory committee. Mr. Jammal explained that "there will be an advisory committee separate from the working group that will allow other interested parties" to participate.⁵

In our view, the membership of the Working Group's Advisory Committee should be comprised of the public intervenors who appeared before the CNSC during the Pickering relicensing hearing and per Mr. Jammal's commitment, comprised of civil society. Thus, as the membership of the advisory committee includes non-civil society members, such as Bruce Power, we request that the CNSC publicly provide a disposition of comments or meeting minutes related to decision-making about the committee's membership.

Recommendation No. 2: The membership of the KI Working Group's Advisory Committee must include members of the public and civil society organizations for reasons of transparency and accountability. Section 4.3 should be updated to expressly reference (1) the Advisory Committee and its members, (2) the mandatory inclusion of civil society within its membership, (3) the role and function of the Advisory Committee, and (4) how decision-making will be shared among the Advisory Committee and Working Group. We also request that a disposition of comments or meeting minutes related to decision-making about the committee's membership be made publicly available.

3. *Establish a timeline to guide stockpiling of KI pills in schools*

Despite the TOR's setting of deadlines for administrative duties, such as the frequency of Working Group meetings (s 3.1), when the agenda must be sent (s 3.5), and drafts posted for public comment (s 4.2), it is silent on a deadline or timeframe guiding the stockpiling of KI pills in schools.

In order to ensure goal-oriented action by the Working Group, it is necessary to set a deadline by which KI stockpiling in schools could occur. As Dr. Robert Kyle, Commissioner for the Medical Officer of Health

⁵ CNSC, "Public meeting transcript – November 8, 2018," online: <http://nuclearsafety.gc.ca/eng/the-commission/pdf/2018-11-08-Meeting-e.pdf>, p 131

with the Durham Region Health Department noted in the recent Pickering NGS relicensing hearing, the focus over the next year will be on replacing the current stock of KI pills whose shelf life is expiring⁶ in time for the start of 2019 school year.

Recommendation No. 3 To ensure goal-oriented action, section 4.0 of the TOR should be updated to include a timeline for the stockpiling of KI pills in schools.

4. *Effective TOR must be collaboratively developed*

In order to be effective, the TOR must be collaboratively developed. Despite repeated requests from CELA to be involved in the drafting of the TOR⁷, preliminary input was not sought.

As early as November 8, 2018, Mr. Jammal commented at the NPP ROR meeting that the working group was “starting to take form” and “some terms of reference ... have been started.”⁸ On January 11, 2019, CELA was further informed at a meeting of the Durham Nuclear Health Committee that OPG had an “active role in the KI Working Group” and the Office of the Fire Marshall and Emergency Management (OFMEM) noted that they would be “getting together [with the CNSC] to look at those comments” received from this consultation.⁹

As such, we are concerned that OPG and the OFMEM whose involvement was sought in the drafting of the TOR, has resulted in their role as *de facto* gatekeepers and compromised the transparency of this process. We therefore request:

Recommendation No. 4 The CNSC should provide a public disposition of comments made by OFMEM and OPG in the making of the draft Terms of Reference.

5. *Public awareness should be expressly stated within scope of TOR*

In the Pickering NGS relicensing decision, it is noted that CNSC staff ‘strongly support’ efforts to enhance emergency preparedness public awareness campaigns beyond the current 10km Detailed Planning Zone (DPZ).¹⁰ CELA was also informed by OFMEM at the DNHC meeting on January 11, 2019 that the availability of emergency planning information beyond the DPZ was among the issues being considered by the KI Working Group.¹¹ Therefore, CELA recommends the following:

⁶ CNSC, “Pickering Hearing Transcript - June 28, 2018,” p 56

⁷ See CELA, “Comments on CNSC Regulatory Oversight Report for Nuclear Power Plants,” online: <http://www.cela.ca/comments-cnsc-generating-sites>

⁸ *Supra* note 6, p 130

⁹ Personal notes, Kerrie Blaise (11 Jan 2019)

¹⁰ Record of Decision (20 Dec 2018) “Application to Renew the Nuclear Power Reactor Operating Licence for the Pickering Nuclear Generating Station, para 505

¹¹ *Supra* note 10

Recommendation No. 5 The Background section of the TOR should reiterate the Commission’s acknowledgement that public awareness needs to be extended beyond the DPZ. Section 1.1 of the TOR should also be amended to expressly acknowledge that the scope of the Working Group includes the strengthening of public awareness regarding nuclear emergency preparedness within the IPZ.

6. The TOR should specify its guiding principles and values

The TOR should include a section titled “Guiding Principles and Values” which specifies Working Group’s research ethics and foundational principles. To ensure the meaningful implementation of these principles, they must be followed in a publicly, justifiable way. For instance, proclamations of transparency are hollow if reasons in support of decisions are not made publicly available. Furthermore, insufficient public disclosure can impede the depth of public participation and diminish accountability.¹²

Recommendation No. 6 CELA recommends the inclusion of the following principles and accompanying meanings as a new section in the TOR:

Transparency The Working Group commits to providing a public disposition of comments based on discussions with its membership and the reasons which informed the members’ decisions in formats which are easily publicly accessible and intelligible.

Publicly accessible The Working Group shall ensure all documents related to its mandate are publicly available on the CNSC consultation website and that documents are posted within 7 days of a meeting.

Best Interests of the Child To the maximum extent possible, the Working Group commits to prioritizing the best interests of the child¹³ in the administration of the Working Group’s purpose and implementation of accompanying measures.

7. The TOR should include a “Methods” section

CELA requests the TOR provide further details related to the methods the Working Group will employ in reaching decisions. We request the inclusion of a “Methods” section which outlines:

- The type of data and sources which be relied upon in reaching conclusions
- Indicators used to guide and measure performance
- Factors used to assess success or verification of mandate

¹² Access Info, “Opening Up Decision Making,” online: <https://www.access-info.org/decision-making-transparency>

¹³ *United Nations Convention on Rights of the Child*, 12 November 1989, UNTS 1577

Recommendation No. 7: A new section titled “Methods” should be included which sets out the data and sources relied upon during decision-making, and the indicators used to guide deliverables and Working Group outcomes.

CONCLUSION

Thank you for this opportunity to provide comments on the draft Terms of Reference for the KI Working Group.

Truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read "Kerrie Blaise". The signature is written in a cursive, flowing style.

Kerrie Blaise, Legal Counsel