

Marc Leblanc, Commission Secretary
Canadian Nuclear Safety Commission
280 Slater Street
Ottawa, ON K1P 5S9

Sent via email Marc.Leblanc@cnsccsn.gc.ca

September 10, 2019

Re: Revised Notice of Public Hearing (Ref. 2020-H-01) - Request to Change Hearing Location

Dear Mr. Leblanc,

As counsel for the Citizens Against Radioactive Neighbourhoods (“CARN”), the Canadian Environmental Law Association seeks your attention in the matter of the BWXT Nuclear Energy Canada Inc.’s 10-year licence renewal (Ref. 2020-H-01).¹ In response to the Canadian Nuclear Safety Commission’s (“CNSC”) Revised Notice of Public Hearing dated September 5, 2019, we respectfully request the Canadian Nuclear Safety Commission reconsider its decision to hold the public hearing in Toronto rather than Peterborough, Ontario.

ABOUT CARN

Citizens Against Radioactive Neighbourhoods (CARN) is a Peterborough-based group whose membership has an interest in nuclear facilities, the licensing process, and the impact of nuclear facilities on the health of communities and the environment.

CARN is an exclusively volunteer led group of concerned citizens that works with the local community to raise awareness about nuclear facilities, and advocate for stringent human health and environmental safeguards. CARN has applied for participant funding to facilitate its participation in the March 2020 BWXT licensing hearing.

REQUEST TO THE COMMISSION

CARN requests that the Commission reconsider its decision to hold the BWXT licensing hearing in Toronto and submits a more suitable location would be Peterborough, because of the nature of the licensing change being requested by the licensee.

¹ Canadian Nuclear Safety Commission, “Revised Notice of Public Hearing – Ref. 2020-H-01” (5 September 2019), online: <http://www.nuclearsafety.gc.ca/eng/the-commission/pdf/NoticePublicHearing-BWXT-March2020-Revision1-e.pdf>

The licensee, BWXT, is seeking a change in its licence which would provide it the flexibility to conduct pelleting operations at its Peterborough facility.² Per section IV of the current licence, BWXT is only authorized to produce depleted uranium dioxide pellets at its Toronto facility. Section 2.4 of BWXT's Licence Conditions Handbook further details this authorization. As the requested licencing change for the Peterborough facility is a significant departure from existing authorizations – and no change in use or operation is contemplated for BWXT's Toronto facility - a duty of fairness is owed to the citizens of Peterborough whose rights, interests and privileges stand to be affected by this licensing matter.³

While recognizing the Commission's latitude in setting its own procedure, in reaching its decision regarding the most suitable location for the hearing, the Commission should consider factors such as the location of the parties and intervenors, the cost incurred to proceed at either location, and the prejudice which may result from transferring the proceeding.⁴ Critically, citizens who have a direct interest in the proceeding must be provided the procedural rights allowing them to effectively participate in the proceeding.

CARN submits that locating a hearing over 130km away from the licenced facility when adequate hearing facilities are available in Peterborough impedes their ability and that of Peterborough residents from effectively participating in the proceedings. Due to the lack of direct transit options to the Toronto-based hearing location, many members of CARN have expressed an apprehension at having to drive on HWY 401 which is not only plagued with traffic delays, but overwhelming to some drivers. This too serves as a bar to their participation. Further, citizens wishing to participate but having to travel to Toronto would also incur a cost, including for travel and accommodation, which would not exist if the hearing were to be held in Peterborough. Therefore, the Toronto-based hearing location poses both financial and logistical barriers to many citizens who, but for the location, would otherwise intervene. Lastly, a change in location would not prejudice other parties to the proceeding, namely BWXT, as they have offices in both Toronto and Peterborough.

While we recognize the Revised Notice of Hearing states "participation in the public hearing from the Peterborough area will be available through videoconferencing at a location to be confirmed at a later date," we submit this is not a sufficient nor equivalent alternative to an in-person hearing. Participatory rights afforded to Peterborough residents should be equal to those of the proponent and CNSC Staff, whom we presume will be located at the Toronto location. Absent an ability to call experts or cross-examine, an in-person format is crucial if there is to be dialogue between intervenors, the Commission and CNSC Staff.

CARN also reminds the Commission that weeks prior to the Pickering Nuclear Generating Station licence renewal, the Commission acted on requests from the public and Pickering-Uxbridge MP Jennifer

² BWXT Licence Application, p 33

³ *Canadian Arab Federation v Canada (Minister of Citizenship and Immigration)*, [2015] FCJ No 957 (FCA), leave to appeal refused [2015] SCCA No 437; *Black v Advisory Council for the Order of Canada*, [2012] FCJ No 1309 (FC), affd [2013] FCJ No 1284 (FCA); *Mital v Canada (Minister of Health)*, [2015] FCJ No 754 (FC), affd [2016] FCJ No 242 (FCA), leave to appeal refused [2016] SCCA No 156.

⁴ *Club Resorts Ltd v Van Breda*, [2012] SCJ No 17, 2012 SCC 17 (SCC).

O'Connell to move the hearing location from Courtice to Pickering. In that instance, the licenced facility was 30 km away from the originally approved hearing location of Courtice. In this instance, the licenced facility exceeds 100 km. We again ask that the Commission exercise its discretion in a way which enhances, rather than complicates and impedes public participation, particularly because of the licence change being requested by BWXT.

For the foregoing reasons, CARN submits that conducting a hearing in Peterborough would be more fair and appropriate in circumstance. We respectfully request the Commission reconsider its Revised Notice of Public Hearing dated September 5, 2019 and change the location of the hearing to Peterborough, Ontario.

Sincerely,



Kerrie Blaise on behalf of Citizens Against Radioactive Neighbourhoods
Counsel, Canadian Environmental Law Association

cc Member of Parliament for Peterborough-Kawartha, Maryam Monsef