

PMD 13-P1.78.A

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**Written Closing Remarks from
Rod McLeod**

**Observations écrites finales de
Rod McLeod**

In the Matter of

À l'égard de

Ontario Power Generation Inc.

Ontario Power Generation Inc.

OPG's Deep Geological Repository (DGR)
Project for Low and Intermediate Level
Radioactive Waste

Installation de stockage de déchets radioactifs à
faible et moyenne activité dans des couches
géologiques profondes

Joint Review Panel

Commission d'examen conjoint

October 2014

Octobre 2014

Rod McLeod Closing Submission
re JRP Ruling #3 October 11, 2013
re Reasonable Apprehension of Bias

Ruling #3 is not responsive to the precise submissions made both orally September 23, 2013 and earlier in written form:

- 1(a) The sole basis of my submission that a reasonable person could reasonably apprehend bias was the combination of:
- (i) Section 2 of the Agreement between the Minister of Environment and CNSC establishing the JRP and Section 22 of the Nuclear Safety and Control Act authorizing the JRP to: "...to exercise or perform any or all of the powers and duties and functions of the Commission.", and
 - (ii) The further words of Section 22 prescribing the way the JRP was to do so with the words: "...as directed by the President...", and
 - (iii) the unfortunate, but nevertheless real, expression of bias by the President in the course of an unlawful meeting of Bruce County Council, OPG and NWMO September 30, 2009 when he is noted, by an OPG employee, as saying:

"...he hoped their next meeting with him would be at the ribbon-cutting ceremony for the Intermediate and Low Level DGR."

- 1(b) Instead of dealing with this submission, Ruling #3 was devoted, almost exclusively, to a somewhat indignant negating of a submission that was never made, - that one or more of the three members of the Panel was biased or conflicted.

Both the written and oral submissions included an express acknowledgement that there was no suggestion of any reasonable apprehension of bias caused by the persona, words or conduct of any of the Panel members.

- 2(a) Ruling #3 characterizes the issue, in paragraph 3 of the Ruling, as whether there was evidence suggesting: "...we have prejudged the matter..." and "were approaching the review with a closed mind or that we were influenced by outside factors..."
- 2(b) No such submissions were ever made. The issue was not only limited as described in #1 above, but the law is clear that, with a quasi judicial tribunal which the Panel is, "prejudging", "closed mind" or "influenced" are never "the

issue”.

3. Moreover, the Panel, in paragraph 4 of the Ruling, has incorrectly stated the legal test as “WOULD” the reasonable bystander conclude that apprehension of bias has been created. The law, which was clearly stated for you in both the oral and written submissions, is that the test is: “COULD” the reasonable bystander apprehend bias. This is a serious error in law.
4. With respect to disposition, Ruling 3, in paragraph 1, states: “Mr. McLeod requests that “...if the Panel is satisfied this procedural defect is made out, an obvious remedy is for the Panel to recuse itself””. I made no such request. Both the oral and written submissions were very clear in stating that the Panel had three options:
 - 1) agree and recuse (an obvious possible disposition),
 - 2) disagree, and
 - 3) defer ruling until it heard all the evidence disclosing multiple other procedural defects and decide what to do with the cumulative effect of all of them.

It was my submission the Panel should not adopt the “obvious remedy” at that early stage in the proceedings, but rather, should follow option 3.

The multiple other serious procedural defects in the proponentcy, when combined with this one, create a cumulative case for refusing to recommend approval of the project.

Respectfully submitted,

Rod McLeod

October 7,2014