

PMD 13-P1.164.B

File / dossier : 8.01.07

Date: 2014-10-09

Edocs: 4535741

Written Closing Remarks from Greenpeace Canada

Observations écrites finales de Greenpeace Canada

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

**Greenpeace Canada's
final submission to the
Joint Review Panel on
Ontario Power Generation's
proposed
Deep Geological Repository**

October 9, 2014

Prepared by Shawn-Patrick Stensil

GREENPEACE

Summary

Based on the evidence (or lack thereof) on the public record, Greenpeace submits that the Joint Review Panel (JRP) cannot recommend approval of the Ontario Power Generation's (OPG) proposed Deep Geological Repository (DGR) under *Canadian Environment Assessment Act* (CEAA) or under the *Nuclear Safety Control Act* (NSCA).

Specifically, the project must be rejected because:

- OPG and the Canadian Nuclear Safety Commission (CNSC) did not review this project in a precautionary manner as required by the CEAA. In fact, throughout the eight years that this project has been under review OPG and the CNSC have repeatedly acted to avoid identifying and publicly discussing uncertainties related to this project, in particular the nature and extent of the radioactive waste that will be stored in the DGR. *The result is insufficient information to identify and evaluate the significance of environmental, social and economic effects or assess alternate means of carrying out the project as required by the CEAA.*
- The CNSC acknowledged on the record that it lacks the technical expertise and understanding needed to assess whether a project promotes or harms sustainable development under the CEAA. CNSC staff also acknowledged the agency didn't search out support to address this institutional deficiency during the course of this review. *The result of this apparent intentional ignorance of sustainability assessment is there is insufficient information available to assess whether the DGR meets the sustainability and precautionary requirements of the CEAA.*

In light of these evidentiary gaps, this environmental review is incomplete. Greenpeace submits that the JRP cannot recommend approval of the OPG's proposed DGR based on the evidence provided. In addition to the comments presented below, Greenpeace fully endorses the submission of the Canadian Environmental Law Association [CELA], Northwatch and Mr. Frank Greening with respect to the failure to fulfill the requirements of the CEAA in this environmental assessment.

Based on the evidence available, Greenpeace feels the JRP should produce a final report that recommends:

- 1) The Minister of the Environment deny OPG approval of the DGR under CEAA and the NSCA;
- 2) The CNSC be directed to develop institutional capacity and culture able to carry out sustainability assessment under the CEAA;

This review was not carried out in precautionary manner

Section 4(1)(a) of the CEAA states that one of its purposes is “to ensure that projects are considered in a careful and precautionary manner before federal authorities take action with them, in order to ensure that such projects do not cause significant adverse environmental effects.”

Applying the precautionary principle involves proactively identifying uncertainties. These uncertainties can then be transparently assessed to recognize risks that could harm the environment or society.

A review of the record shows that OPG and the CNSC did not review this project in a precautionary manner. The result is insufficient information to identify and evaluate the significance of environmental, social and economic effects or assess alternate means of carrying out the project as required by the CEAA.

The most egregious example of the non-pre-cautionary approach used throughout this review is OPG’s failure to be forthcoming about its long-term vision for DGR. OPG triggered this environmental review in 2006 and it has been apparent to many that OPG’s plan was to eventually store decommissioning waste in the DGR.

Greenpeace asked for decommissioning wastes be considered part of the project in its 2006 comments on the proposed Comprehensive Study Scoping Document.¹ The CNSC dismissed Greenpeace’s request. When this project was upgraded to a Joint Panel Review, Greenpeace reiterated this request in its comments on the proposed guidelines.² The CNSC again dismissed Greenpeace’s request.

During the hearing process in 2013, OPG acknowledged its long-term plan was to expand the DGR to store decommissioning wastes, but it had yet to made a “business decision” whether to proceed. This wasn’t news to the CNSC, however. Greenpeace cited OPG acknowledging its plans to expand the DGR to store decommissioning wastes in its comments on the environmental review guidelines in 2006 and 2008.

All this this highlights that OPG and the CNSC have been aware from the outset that OPG was planning to significantly expand the DGR to store a large volume of more radioactive decommissioning wastes. In Greenpeace’s view, if OPG and the CNSC were assessing this project in a precautionary manner they would have proactively acknowledged this uncertainty,

¹ Dave H. Martin, Comments on the Proposed Comprehensive Study Scoping Document for an Environmental Assessment of the Proposal by Ontario Power Generation for a Deep Underground Dump (DUD) for Low- and Intermediate-Level Radioactive Waste, Submitted to the Canadian Nuclear Safety Commission by Greenpeace, September 22, 2006.

² Marvin Resnikoff, PhD and Emily Brown, *Comments on the Draft “Guidelines for the Preparation of the Environmental Impact Statement for the Deep Geologic Repository of Low- and Intermediate-Level Radioactive Wastes*, Prepared for Greenpeace Canada by Radioactive Waste Management Associates, June 2008.

fully address the potential wastes within the current review and shared the information with the public. This was not done.

Evidence suggests this could be attributed to the mindset of the two organizations. As was heard repeatedly during the hearing process, the CNSC and OPG understand and assess risk very differently than the general public.

The record also suggests that the CNSC and OPG's approach risk to assessment differs from the precautionary approach called for under the CEAA. As noted in Greenpeace's oral presentation to the JRP, CNSC president Michael Binder has publicly dismissed the precautionary principle and characterized it as a "do nothing" approach. He stated instead that the CNSC uses the ALARA (As Low As Reasonably Achievable) approach to risk assessment³

Greenpeace submits that this apparent aversion to the precautionary principle has undermined the current review by improperly constraining the information available to the JRP and the public. When faced with a potential uncertainty, such as the full range of wastes OPG plans to store in the DGR, the CNSC and OPG have repeatedly asserted risks and possible effects will be considered in a future licensing or environmental review process.

Greenpeace submits that the deferral of such assessments is contrary the precautionary objectives of the CEAA. Precaution calls on the CNSC and OPG to anticipate and assess possible uncertainties. Over the eight years of this review, the CNSC and OPG have systematically avoided evaluating the DGR in a precautionary manner.

Sustainability Assessment

Section 4(1)(b) of CEAA says one of its purposes is to "To encourage federal authorities to take actions that promote sustainable development". Section 2.4 of the environmental review guidelines also state OPG should assess whether the DGR contributes to sustainable development.

Given the long-lived hazard of the radioactive wastes, sustainability assessment is particularly important. Sustainability assessment was created to discourage decisions that will result in the transfer of adverse effects or risks to future generations.⁴

Greenpeace agrees with CELA's analysis that OPG failed to carry out a proper sustainability assessment. Similar to OPG and the CNSC's aversion to precaution, Greenpeace submits that OPG and the CNSC knowingly avoided carrying out a sustainability assessment commensurate with the scale of this project. Indeed, the CNSC acknowledged on the record that it lacks the

³ Transcripts of the Deep Geological Repository for Low and Intermediate Level Radioactive Waste Project, Joint Review Panel, October 3, 2013, p. 237 – 239.

⁴ Gibson, R.B. (2006). Sustainability assessment: Basic components of a practical approach. *Impact Assessment and Project Appraisal* 24(3): 170-182.

technical expertise and understanding to assess whether a project promotes or harms sustainable development under CEAA. CNSC staff also acknowledged the agency didn't search out support to address this institutional deficiency during the course of this review.⁵

The result of the CNSC's apparent intentional ignorance is there is insufficient information available to assess whether the DGR meets the sustainability precautionary requirements of the CEAA.

It should be noted that previous federal panel reviews, notably of the Mackenzie Valley Pipeline project, Whites Point Quarry and Marine Terminal, and of the Voisey's Bay Mill and Mine project, provide precedents for sustainability assessment. Indeed, the aforementioned reviews resulted in decisions to reject the Whites Point Quarry and Marine Terminal projects.⁶ In the Mackenzie Valley and Voisey's Bay examples, the sustainability-based evaluation underpinned the Panels' requirements for significant adjustments in the projects in order to ensure net benefits to society.^{7,8,9}

In light of this lack of sustainability assessment, Greenpeace feels the JRP doesn't have sufficient information to recommend approval of the DGR under the CEAA.

As noted in Greenpeace's oral presentation, Greenpeace feels the CNSC should be directed to develop institutional capacity and culture able to carry out sustainability assessment in future environmental reviews.

Conclusion

Over the past eight years Greenpeace has attempted to constructively intervene in this review of OPG's proposed radioactive waste repository.

Despite much time and effort by many parties, Greenpeace concludes that the review process has not provided a reasonable basis to conclude that the project is unlikely to cause significant effects or positively contribute sustainable development. Greenpeace respectfully recommends the JRP reject OPG's proposal.

⁵Transcripts of the Deep Geological Repository for Low and Intermediate Level Radioactive Waste Project, Joint Review Panel, October 3, 2013, p. 180 – 184.

⁶Fonesca, A., & Gibson, R. Application denied: BC's Kemess North and Nova Scotia's Whites Point projects promised jobs and revenue, but the communities were looking for overall sustainability. *Alternatives Journal* 34 (4): 9-11.

⁷Gibson, R. (2002). EA in Canada: From wreck cove to Voisey's Bay: The evolution of federal environmental assessment in Canada. *Impact Assessment and Project Appraisal* 20 (3): 151-159.

⁸Gibson, R.B. (2006). Sustainability-based assessment criteria and associated frameworks for evaluations and decisions: theory, practice and implications for the Mackenzie Gas Project review. http://www.ngps.nt.ca/registryDetail_e.asp?CategoryID=271

⁹Gibson, R.B. (2006). Sustainability assessment and conflict resolution: Reaching agreement to proceed to the Voisey's Bay nickel mine. *Journal of Cleaner Production* 14: 334-348.