

JUL 03 2014

John Mann

Re: Your Submission of June 19th, 2014 / Motion to Dismiss and Motion to Recuse /
DGR Joint Review Panel Hearing

Dear Mr. Mann:

The DGR Joint Review Panel (the Panel) has reviewed your request “to dismiss OPG’s DGR application and terminate the DGR process” on the basis of “unreasonable delay and Joint Review Panel advocacy.” In your submission, you allege that the process should be terminated on the basis of an “appearance of bias or reasonable apprehension of bias” because as you argue, OPG was given “numerous opportunities to shore up and bolster a doomed Record” through the request for additional information that the Panel has issued to OPG and the Canadian Nuclear Safety Commission since last October as part of its ongoing review.

The Panel reminds you, that contrary to your allegation, the review of the Project is still ongoing and was not brought to a close last October. As the Panel stated at the end of the hearing days last October: “[O]nce we are satisfied that we have all of the required information, we will announce the close of the record for the purpose of the environmental assessment review.”¹

As per the *Agreement to Establish a Joint Review Panel for the Deep Geologic Repository Project by Ontario Power Generation Inc. within the Municipality of Kincardine, Ontario*,² the mandate of the Panel is to gather all of the information that it needs to discharge the requirements set out in CEAA 2012, consider the Licence Application under the *Nuclear Safety and Control Act*³ and obtain information on the effects the project may have on potential or established Aboriginal rights, title or treaty rights.

In accordance with the specific mandate it has received, the Panel has a proactive obligation to seek and obtain all of the information it needs. The Panel’s mandate is very different from that of a court which entertains adversarial proceedings. The role of an expert panel is not strictly to adjudicate on the evidence submitted, but to gather, test and

¹ Transcript Volume 25, October 30, 2013

² As amended August 27, 2013

³ S.C. 1997, c.9

use its expert judgment in formulating the rationale to support its recommendations and conclusions. As Mullan notes in *Administrative Law: Cases, Text and Materials*, “[t]he powers, membership, and procedure of many agencies have been designed specifically to perform tasks that ... may be quite different from those assigned to courts.”⁴

The review of the proposed project is still ongoing and the review process has not yet been closed, and will not be closed, until the Panel is satisfied that it has all of the information that it needs. The information request process has been used all along to obtain further relevant information from the proponent, federal and provincial entities and the public. This is an open and transparent process that allows the public the opportunity to follow the work of the Panel and to have access to the information. The public hearing is an additional forum that allows for the evidence to be further tested and clarified.

This is a complex project that needs a detailed and thorough review. The Panel disagrees with your allegation that it is operating under “unreasonable delay.” As it stands, the review process is well within the timelines that have been established by the Minister of the Environment and the President of the Canadian Nuclear Safety Commission.

Accordingly, the Panel denies your Motion to dismiss. The Panel is pursuing its work as mandated and contrary to the allegation raised in your submission, the hearings have not been closed. Once the Panel determines that the review is completed and announces the close of the record, it will then have 90 days to submit its Report to the Minister. The 90 day timeline will only start then.

With regard to your Motion that the Panel recuse itself, the Panel has already dealt with and ruled on your same request as part of the Preliminary Rulings Process.⁵ The Panel is of the view that your request does not contain any new or any substantiated information that would warrant the Panel to reconsider its determination: your motion to recuse is denied.

original signed by

Stella Swanson
Chair, Deep Geologic Repository Joint Review Panel

⁴ Mullan, David J. *Administrative Law: Cases, Text and Materials*, 5th ed. (Toronto: Emond Montgomery Publications Limited, 2003) at p. 15-16.

⁵ Joint Review Panel Decision on Request for Rulings dated September 6, 2013