



Canadian Nuclear
Safety Commission

Commission canadienne
de sûreté nucléaire

Record of Decision

In the Matter of

Applicant Canadian Nuclear Laboratories Ltd.

Subject Application to Separate the Waste Facility
Decommissioning Licence for Douglas Point,
Gentilly-1 and Nuclear Power Demonstration
into Three Licences

Date of
Decision February 8, 2019

RECORD OF DECISION

Applicant: Canadian Nuclear Laboratories Limited

Address/Location: 286 Plant Road, Chalk River, Ontario, K0J 1J0

Purpose: Application to Separate the Waste Facility
Decommissioning Licence for Douglas Point, Gently-1
and Nuclear Power Demonstration into Three Licenses

Application received: July 11, 2018

Date of decision: February 8, 2019

Location: Canadian Nuclear Safety Commission (CNSC)
280 Slater St., Ottawa, Ontario

Panel of Commission: R. Velshi, President

Douglas Point Waste Facility Decommissioning Licence: Amended

Gently-1 Waste Facility Decommissioning Licence: Issued

Nuclear Power Demonstration Waste Facility Decommissioning Licence: Issued

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1.0 INTRODUCTION

1. Canadian Nuclear Laboratories Ltd. (CNL) has submitted an application to the Canadian Nuclear Safety Commission¹ (CNSC), under subsection 24(2) of the *Nuclear Safety and Control Act*² (NSCA), to separate its Waste Facility Decommissioning Licence (WFDL) for the Douglas Point (DP), Gentilly-1 (G-1), and the Nuclear Power Demonstration (NPD) sites, WFDL-W4-332.01/2034, into three separate licences. The DP site is located in Tiverton, Ontario, the G-1 site is located in Bécancour, Quebec, and the NPD site is located in Rolphton, Ontario. The current licence, which includes all three facilities, expires on December 31, 2034.
2. Atomic Energy of Canada Limited (AECL) owns the DP, G-1 and NPD sites, which include three partially-decommissioned prototype power reactors and associated structures, and ceased operation during the 1980s. Since then, the reactors have been kept in a state of storage with surveillance while pending active decommissioning. CNL manages low- and intermediate-level radioactive wastes at all three sites and manages used nuclear fuel in concrete dry storage canisters at the DP and G-1 sites.
3. CNL has developed separate decommissioning strategies for each site and, in July 2018, submitted an application to the CNSC to separate the current licence to more easily facilitate the different decommissioning strategies and timelines across the three sites. CNL is not requesting any changes to the licensed activities or the expiry date from the current licences. As such, CNSC staff has recommended that the Commission amend the current WFDL to remove references to the G-1 and NPD sites from that licence. CNSC staff has also recommended that the Commission issue two new licences for each of the G-1 and NPD sites.

Issue

4. In considering the application, the Commission was required to decide:
 - a) whether an environmental assessment (EA) under CEAA 2012 was required before considering this licence application;
 - b) whether CNL is qualified to carry on the activities that the licences would authorize;
 - c) whether, in carrying on those activities, CNL would make adequate provision for the protection of the environment, the health and safety of persons and the maintenance of national security and measures required to implement international obligations to which Canada has agreed.

¹ The *Canadian Nuclear Safety Commission* is referred to as the “CNSC” when referring to the organization and its staff in general, and as the “Commission” when referring to the tribunal component.

² Statutes of Canada (S.C.) 1997, chapter (c.) 9.

Hearing

5. Pursuant to section 22 of the NSCA, I established myself to preside as a Panel of one Commission Member to hear the application. The Commission, in conducting a public hearing based on written materials, considered written submissions from CNL (CMD 18-H107.1) and CNSC staff (CMD 18-H107).

2.0 DECISION

6. Based on its consideration of the matter, as described in more detail in the following sections of this *Record of Decision*, the Commission concludes that CNL satisfies the conditions of subsection 24(4) of the NSCA. Therefore,

the Commission, pursuant to section 24 of the *Nuclear Safety and Control Act*, amends the Waste Facility Decommissioning Licence WFDL-W4-332.01/2034 issued to Canadian Nuclear Laboratories Ltd. to only include the Douglas Point site in Tiverton, Ontario, and to remove references to the Gentilly-1 and Nuclear Power Demonstration sites. The amended licence, WFDL-W4-332.02/2034, is valid until December 31, 2034.

the Commission, pursuant to section 24 of the *Nuclear Safety and Control Act*, issues the Waste Facility Decommissioning Licence WFDL-W4-331.00/2034 to Canadian Nuclear Laboratories Ltd. for its Gentilly-1 site located in Bécancour, Quebec. The licence is valid until December 31, 2034.

the Commission, pursuant to section 24 of the *Nuclear Safety and Control Act*, issues the Waste Facility Decommissioning Licence WFDL-W4-342.00/2034 to Canadian Nuclear Laboratories Ltd. for its Nuclear Power Demonstration site located in Rolphton, Ontario. The licence is valid until December 31, 2034.

7. The Commission notes that CNL did not request any changes to the licensed activities or the expiry date of the licence. However, with this decision, the Commission removes licence condition 1.6³ in WFDL-W4-332.01/2034 from the amended licence for the DP site and does not include it in the licences issued for the G-1 and NPD sites.

³ Licence condition 1.6 reads “The licensee shall comply with all commitments defined in the WFDL-W4-332.01/2034 LCH.”

8. Therefore, the Commission includes licence condition 1.6 (previously licence condition 1.7) in WFDL-W4-332.02/2034, WFDL-W4-331.00/2034 and WFDL-W4-342.00/2034 which will read “*The licensee shall implement and maintain a public information program and disclosure program.*” Further, and with the exception of licence conditions 1.6 and 1.7 as detailed above, the Commission includes in the amended licence for the DP site, and the licences for the G-1 and NPD sites, the same licence conditions as those in WFDL-W4-332.01/2034. The Commission also delegates authority to specific CNSC staff as recommended in CMD 18-H107.
9. The Commission expects CNSC staff to update the LCHs for the three WFDLs, to reflect the removal of licence condition 1.6, and the revision of licence condition 1.7 to be licence condition 1.6, as detailed above.

3.0 ISSUES AND COMMISSION FINDINGS

10. In making its licensing decision, the Commission considered a number of issues and submissions relating to CNL’s qualification to carry out the licensed activities. The Commission also considered the adequacy of the CNL’s proposed measures for protecting the environment, the health and safety of persons, national security and international obligations to which Canada has agreed.
11. In its consideration of this matter, the Commission examined the completeness of the application and the adequacy of the information submitted by CNL, as required by the NSCA, the *General Nuclear Safety and Control Regulations*⁴ (GNSCR) and other applicable regulations made under the NSCA.
12. Details and the Commission’s consideration of information submitted by CNL in support of its licensing request and of CNSC staff assessments in relation to this matter are provided in the following sections of the *Record of Decision*.

3.1 Application of *Canadian Environmental Assessment Act, 2012*

13. In coming to its decision, the Commission was first required to determine whether an Environmental Assessment (EA) under the *Canadian Environmental Assessment Act, 2012*⁵ (CEAA 2012), was required.
14. The application submitted by CNL is for the separation of its WFDL-W4-332.01/2034 into three licences, through an amendment of that licence and the issuance of two new WFDLs, for which CNL is not requesting authorization for new projects or physical activities.⁶ As such, the Commission notes that the requested licensing activities are not

⁴ SOR/2000-202.

⁵ Statutes of Canada (S.C.) 2012, chapter (c.) 19.

⁶ “Projects” as defined in section 66 of CEAA 2012.

designated projects under CEAA 2012, and consequently no EA is required under that Act at this time.

3.2 Other Matters for Consideration

15. The Commission considered the information submitted by CNL regarding the regulatory requirements in respect of its licensing application. CNL submitted that, considering the diversity of planned decommissioning strategies and associated timelines for the DP, G-1 and NPD sites, CNL had determined that separate licences for the three sites would allow for more appropriate management of the sites. CNL also submitted that, as final detailed decommissioning plans were developed and submitted for the Commission's approval for the three sites through future licence amendments, separate licences would allow for more effective communication with, and representation of, the host communities of the three sites.
16. CNSC staff submitted that, throughout the current licence period, it had and would continue to verify CNL's compliance with regulatory requirements at the DP, G-1 and NPD sites through inspections and documentation reviews. CNSC staff confirmed that, as CNL's application did not include any changes to licensed activities, its assessment of individual safety and control areas remained unchanged.
17. The Commission recognized that CNL's work to date at those sites, as well as CNSC staff's oversight of that work, had been presented to the Commission at public meetings in April 2016^{7,8} and August 2018.^{9,10} CNSC staff informed the Commission that CNL's performance at those sites would continue to be presented to the Commission during public meetings.
18. The Commission also delegates authority for certain approval or consent, as contemplated by licence conditions which contain the phrase "a person authorized by the Commission," to the following CNSC staff, as recommended in CMD 18-H107:
 - Director, CNL Regulatory Program Division
 - Director General, Directorate of Nuclear Cycle and Facilities Regulation
 - Executive Vice-President and Chief Regulatory Operations Officer, Regulatory Operations Branch

⁷ CNSC CMD 16-M12, Status Update, "*Status Update for CNL Prototype Waste Facilities and Whiteshell Nuclear Laboratories*", March 22, 2016

⁸ *Minutes of the Canadian Nuclear Safety Commission (CNSC) Meeting held on April 6 and 7, 2016*, Paragraphs 23-36

⁹ CNSC CMD 18-M30, Technical Briefing, "*Progress Update for CNL's Prototype Waste Facilities, Whiteshell Laboratories and the Port Hope Area Initiative*", June 22, 2018.

¹⁰ *Minutes of the Canadian Nuclear Safety Commission (CNSC) Meeting held on August 22 and 23, 2018*, Paragraphs 61-94.

Aboriginal Engagement

19. The common law duty to consult with Aboriginal peoples applies when the Crown contemplates action that may adversely affect established or potential Aboriginal and/or treaty rights. The CNSC, as an agent of the Crown and as Canada's nuclear regulator, recognizes and understands the importance of building relationships and engaging with Canada's Aboriginal peoples. The CNSC ensures that its licensing decisions under the NSCA uphold the honour of the Crown and considers Aboriginal peoples' potential or established Aboriginal and/or treaty rights pursuant to section 35 of the *Constitution Act, 1982*.¹¹
20. CNSC staff expressed the view that no duty to consult was engaged by the licensing request since CNL's licensing application did not propose any physical or operational changes to the three sites and no impacts to potential or established Indigenous and/or treaty rights were anticipated. CNSC staff further submitted that it will continue to inform all potentially interested Indigenous communities and organization regarding physical or operational changes at the three sites as appropriate, in the interest of building and maintaining relationships with Indigenous people.
21. Based on the information examined by the Commission, the Commission is satisfied that this licensing request will not result in changes to the current decommissioning operations at the DP, G-1 and NPD sites, and that the licensing request would not cause adverse impacts to any potential or established Aboriginal and/or treaty rights. The Commission is satisfied that the duty to consult was not triggered in this matter and is also of the opinion that the engagement activities undertaken for the review of this licensing request application had been adequate.¹²

Cost Recovery

22. A Class I nuclear facility is subject to the requirements of Part 2 of the *Cost Recovery Fees Regulations*¹³ (CRFR). CNSC staff submitted that CNL had consistently paid their cost recovery fees in full throughout the current licence period and that CNSC staff did not submit any concern regarding CNL's payment of cost recovery fees for the remainder of the licence period.
23. CNSC staff informed the Commission that, as the level of risk for the licensed activities for the DP, G-1 and NPD sites would not change because of this licensing request, there would be no change in the cost recovery fees payable by CNL if the sites were licensed separately.
24. Based on the information submitted by CNL and CNSC staff, the Commission is satisfied that CNL has satisfied the requirements of the CRFR for the purpose of the licence

¹¹ *Constitution Act, 1982*, Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.).

¹² *Rio Tinto Alcan v. Carrier Sekani Tribal Council*, 2010 SCC 43[2010] 2 S.C.R. 650 at paras 45 and 49.

¹³ SOR/2003-212.

amendment application and licence applications.

Financial Guarantee

25. The Commission requires that CNL maintain a financial guarantee for the decommissioning of the DP, G-1 and NPD sites pursuant to paragraph 3(1) of the GNSCR. Licence condition 2.2 of the current licence requires CNL to maintain a financial guarantee for the decommissioning of those three sites.
26. CNL submitted that AECL had retained the ownership of those sites as well as the ownership of all associated assets and liabilities under the Government-Owned, Contractor-Operated model. Furthermore, AECL is considered to be a Schedule III, Part 1 Crown Corporation pursuant to the *Financial Administration Act*,¹⁴ and is an agent of Her Majesty in Right of Canada, therefore all of AECL's liabilities, including the DP, G-1 and NPD sites are the liabilities of Her Majesty in Right of Canada. These liabilities have been officially recognized by the Minister of Natural Resources, most recently in a letter dated July 31, 2015. CNSC staff provided to the Commission the recommendation that the Commission continue to accept this commitment as the financial guarantee for the DP, G-1 and NPD sites.
27. After considering the information submitted for this hearing, the Commission is satisfied that the proposed financial guarantee is adequate to provide for the future decommissioning of the DP, G-1 and NPD sites.

Licensee Public Information Program

28. The Commission assessed CNL's public information and disclosure program (PIDP) for the DP, G-1, and NPD sites. The primary goal of the PIDP is to ensure that the information related to the health, safety and security of persons and the environment, and other relevant issues associated with nuclear facilities are effectively communicated to the public.
29. CNSC staff informed the Commission in written materials that CNL's PIDP for the DP, G-1 and NPD sites had been developed in accordance with the criteria of RD/GD 99.3, *Public Information and Disclosure*.¹⁵ Further, CNL's PIDP facilitated the access to the information by members of the public to all aspects of the projects on those sites, including decommissioning plans and the disclosure of unplanned events.
30. CNSC staff submitted to the Commission that each of the proposed licences for DP, G-1 and NPD included a licence condition for CNL to maintain a PIDP for each site. CNSC staff further submitted that CNL will also develop a transition plan to incorporate the

¹⁴ R.S.C., 1985, c. F-11

¹⁵ CNSC Regulatory Guide RD/GD 99.3, *Public Information and Disclosure*, 2012.

criteria of the updated REGDOC-3.2.1, *Public Information and Disclosure*,¹⁶ into the PIDP for each of the DP, G-1 and NPD sites.

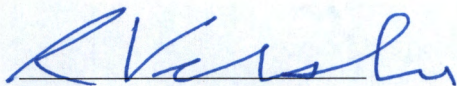
31. Based on the information that was submitted, the Commission is satisfied that CNL's PIDP has and will continue to communicate to the public information about the health, safety and security of persons and the environment and other issues related to the DP, G-1 and NPD sites. Furthermore, the Commission expects that CNL will implement the specifications of REGDOC-3.2.1 for the DP, G-1 and NPD sites as detailed in CNSC staff's written submission.

4.0 CONCLUSIONS

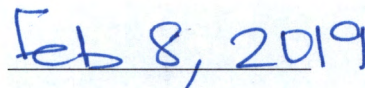
32. The Commission has considered the licensing application submitted by the CNL. Based on its consideration of the information submitted, the Commission is satisfied that the application submitted by the CNL meets the requirements of the NSCA, the GNSCR and other applicable regulations made under the NSCA.
33. The Commission has also considered the information and submissions of CNL and CNSC staff as set out in the material available for reference on the record.
34. The Commission is satisfied that this licensing application does not propose any new activities and that an environmental assessment under CEAA 2012 was not required in this matter. Further, the Commission notes that the NSCA and its regulations provide for the protection of the environment and the health and safety of persons, and is satisfied that the licensee will continue to adequately provide these protections.
35. The Commission is satisfied that CNL meets the test set out in subsection 24(4) of the *Nuclear Safety and Control Act*. That is, the Commission is of the opinion that CNL is qualified to carry on the activity that the proposed licence will authorize and that it will make adequate provision for the protection of the environment, the health and safety of persons and the maintenance of national security and measures required to implement international obligations to which Canada has agreed.
36. Therefore, the Commission, pursuant to section 24 of the *Nuclear Safety and Control Act*, amends the Waste Facility Decommissioning Licence issued to Canadian Nuclear Laboratories Ltd. to include only the Douglas Point site, located in Tiverton, Ontario. The amended licence, WFDL-W4-332.02/2034, is valid until December 31, 2034.
37. Furthermore, the Commission, pursuant to section 24 of the *Nuclear Safety and Control Act*, also issues the following Waste Facility Decommissioning Licence to Canadian Nuclear Laboratories Ltd:
 - for the Gentilly-1 site, located in Bécancour, Quebec. The licence, WFDL-W4-331.00/2034, is valid until December 31, 2034

¹⁶ CNSC Regulatory Document REGDOC-3.2.1, *Public Information and Disclosure*, 2018.

- for the Nuclear Power Demonstration site, located in Rolphton, Ontario. The licence, WFDL-W4-342.00/2034, is valid until December 31, 2034.
38. With this decision, the Commission does not include licence condition 1.6 in the amended licence for the DP site and the licences issued for the G-1 and NPD sites, as proposed by CNSC staff. Rather, the Commission includes in WFDL-W4-332.02/2034, WFDL-W4-331.00/2034 and WFDL-W4-342.00/2034 a revised licence condition 1.6 (previously licence condition 1.7) which will read “*The licensee shall implement and maintain a public information program and disclosure program.*”
 39. With the exception of licence conditions 1.6 and 1.7, the Commission includes in the three licences the conditions and delegations of authority to CNSC staff as recommended by CNSC staff in CMD 18-H107.
 40. The Commission notes that CNSC staff can bring any matter to the Commission as applicable. The Commission directs CNSC staff to inform the Commission on an annual basis of any changes made to the Licence Conditions Handbooks for these licences.
 41. The Commission is satisfied that Indigenous engagement activities carried out for this licence application were adequate. The Commission anticipates that CNL and CNSC staff will continue their expansion of Indigenous engagement activities throughout the licence period of the three licences.
 42. The Commission notes that should CNL seek to accelerate the decommissioning of any of the DP, G-1 or NPD sites, CNSC staff would submit a full assessment of all relevant SCAs for the Commission’s consideration at a separate public Commission hearing.



Rumina Velshi
President,
Canadian Nuclear Safety Commission



Date