



Canadian Nuclear
Safety Commission

Commission canadienne
de sûreté nucléaire

Record of Decision

In the Matter of

Applicant **Bruce Power**

Subject **Request from the Saugeen Ojibway Nation for
Adjournment of the Hearing on the Application to
Renew the Bruce A&B Power Reactor Operating
Licence (PROL)**

**Date of
Decision** **December 21, 2017**

Canada

Reasons for Decision

Bruce Power Licence Renewal Hearing

Request for Adjournment from the Saugeen Ojibway Nation

Panel of one – Michael Binder, President

Background

The CNSC received an application from Bruce Power for renewal of its Bruce A&B Power Reactor Operating Licence (PROL) on June 30th, 2017. On September 1st, 2017, the CNSC released a *Notice of Public Hearing* (Notice) stating that the CNSC would hold a two-part public hearing to consider the application from Bruce Power to renew its PROL for a period of 10 years. The Notice states, in part:

The current licence, which expires on May 31, 2020, allows Bruce Power to operate the Bruce NGS A and B site, which consists of eight nuclear power reactor units and their associated equipment. It does not authorize Bruce Power to carry out life extension activities. With this 10-year licence renewal application, Bruce Power has requested authorization to update the Bruce NGS licensing basis in 2018, to include life extension projects and future major component replacement work, which are outlined in the Integrated Implementation Plan.

Bruce Power takes the position that in order to best accommodate planned life extension projects and major component replacement (MCR) work, it is necessary for licence renewal to happen in advance of the 2020 expiry of the current operating licence.

The Notice indicates that the public hearing is to be held on March 14, 2018 and on May 30-31, 2018. It is important to note that under the Commission process, the earlier date is reserved for an applicant to make its submissions and for CNSC staff to provide their recommendations, in relation to the application. The second date(s) – which is set no less than 60 days after the first date – allows for the applicant, and sometimes CNSC staff, to provide further information as required by the Commission in the first part of the hearing. It is also the time for intervenors to make submissions on the application generally and on the applicant's submission and CNSC staff's submission and recommendations.

Issue

On November 14th, 2017, the Commission received a letter from Saugeen Ojibway Nation (SON letter) expressing concerns with the timelines for the hearing and the process planned for the review of the Bruce Power licence renewal and MCR. The SON letter requests that the Commission “adjourn the hearing dates planned for March and May 2018 to consider Bruce Power's relicensing application including the refurbishment.” SON submits that the “short

timeframes announced by the Commission do not leave our First Nation with sufficient time to engage with the issues raised by the application or the materials supporting it.” The request for adjournment is based, in part, on the authority granted to the Commission in Rule 14 of the *CNSC Rules of Procedure*:

The Commission or a designated officer, as the case may be, on the request of a participant or on their own initiative, may adjourn a proceeding, on such terms and conditions as the Commission or the designated officer considers necessary in the interests of a fair, informal and expeditious consideration of the matter.

On November 20th, 2017 the CNSC sent a copy of the SON letter to Bruce Power inviting its submission on the adjournment request. The response from Bruce Power, received by the CNSC on December 1st, 2017, objects to the adjournment of the hearing, and provides a detailed reasoning for the objection, including citing the prejudice to Bruce Power that would result from an adjournment. On December 14th, 2017, SON responded to Bruce Power’s submission on the adjournment request.

Analysis

The Commission recognizes that SON has defined interests in the area, and has been actively engaged with the project for many years. The Commission understands that the SON, as noted in the letter, “considers the refurbishment to be a deeply significant proposal with serious implications for our Territory and people.” The Commission acknowledges SON’s concerns and will to be included in the decision making processes relating to the Bruce site generally and to the current application. The Commission further recognizes that the honour of the Crown calls upon the CNSC to genuinely listen to and engage with SON in this matter.

The Commission is not at this point in time in a position to make a determination as to the duty to consult or the sufficiency of consultation undertaken. If at the time of the hearing the Commission were to determine that a duty to consult exists, and has not been properly discharged, the Commission could direct further consultation be undertaken, as the proper discharge of any duty to consult would need to be accomplished before a licence renewal could be granted. The Commission also recognizes that the application from Bruce Power is for renewal of a licence to operate an existing NPP, and while it includes a request for authorization for major component replacement, the proposed activities would not expand the footprint of the project. In addition and in light of the recent refurbishment of units 1 and 2 on the site, the question of the future existence of the site as an operating nuclear facility for many years to come has largely been decided, subject to future regulatory and other considerations and approvals.

The Commission has a duty of fairness owed to parties before it, which in this case is Bruce Power as the applicant. The Commission is also guided by the question of how necessary is the adjournment for the proceeding to be considered fair.

The SON letter expresses concerns with the hearing process for an approval “to double the operating life of six of the Bruce facility’s reactors – extending the operations phase alone by

more than 30 years.” The SON have stated that characterizing this as a 10-year licence renewal is disingenuous. While the Commission recognizes that authorizing major component replacement could ultimately mean that the operations phase of the project is extended as the SON describes, the current application submitted by Bruce Power is for a renewal of the licence for a period of 10 years and, in response to this licence application, the Commission will consider whether Bruce Power meets the requirements of the NSCA and its regulations and whether, in its view, Bruce Power will operate the facility safely, for the next 10 years only. Furthermore, pursuant to the NSCA, the Commission’s authority with respect to the MCR project at the Bruce A&B NGS is not whether MCR should be pursued, but if it is to be pursued, whether it can and will be done safely.

The SON letters express concerns with the review process in two parts: concerns with the timing of the hearing, and with the nature of the process. Firstly, the SON takes issue with the amount of time given to the public to review and prepare for the hearing, and compares the number of hearing days allotted for this hearing (3) to the number allotted for the hearing into OPG’s proposed DGR for low and intermediate level waste (33). The Commission has considered the issue of the amount of time allowed for the public to review and prepare for the hearing. The *CNSC Rules of Procedure* require that notice of a public hearing be issued at least sixty days before the hearing is scheduled. In this instance, the Notice was issued six and a half months before the first part of the hearing, and nine months before the second part of the hearing, scheduled for intervenors to present their submissions. This amount of time, in the Commission’s view, is a reasonable amount of time for review and preparation,¹ and is sufficient for the proceeding to be fair to those participating as intervenors, including the SON. The Commission also notes that the amount of time allotted is roughly equivalent to the amount of time provided for other recent licence renewals for NPPs. In considering the comparison with the hearing dates for the DGR, the Commission notes the differences in the projects: DGR is a new project and is a first of a kind in Canada, whereas the Bruce Power matter is a licence renewal for a NPP, for which three days of public hearings is typical. However, as noted above, the Commission has the flexibility to add additional time to the hearing schedule if necessary.

The Commission notes that SON have expressed surprise at the submission of the application for licence renewal and MCR approval taking place in 2017; Bruce Power has stated that SON have been informed, since December 2015, of the plans for licence renewal and MCR activities. While the Commission understands that the SON may have been surprised that the licence application was submitted so far in advance of the 2020 licence expiry, the Commission acknowledges that the SON were informed of Bruce Power’s plan, and nevertheless will have had at least nine months to review and prepare for the hearing.

The SON also expresses concern with regard to the nature of the process, specifically that no environmental assessment (EA) under *Canadian Environmental Assessment Act, 2012* (CEAA, 2012) is being undertaken, and states that the environmental review undertaken under the NSCA “is demonstrably inadequate and unacceptable to SON . . . and will almost certainly fail to meaningfully address our concerns with the project, and consequently, to discharge the Crown’s constitutional obligations to SON with respect to the project.” The SON states that it has initiated

¹ Bruce Power provided the SON with the application in advance of the September 1st, 2017 Notice, on July 26th, 2017.

discussions with the Minister of the Environment and Climate Change Canada about “whether the refurbishment requires designation under the CEAA, 2012.” The Commission recognizes that according to the CEAA, 2012, no EA is required for this licence renewal and MCR. According to the *Nuclear Safety and Control Act*, no licence may be issued unless the Commission is satisfied that the applicant will provide adequate protection for the environment; it will be through the hearing process that the Commission will assess the applicant’s proposed measures and CNSC staff’s review and recommendations regarding the safety of the proposed activities to be licensed. The Commission takes the position that it has the authority to meet the Crown’s constitutional obligations with respect to Aboriginal communities as they pertain to this licence renewal process, and that it will do so.

The SON letter of November 24 contains an attachment further describing the SON’s concerns; in it, the SON argues that “serious gaps” exist in the SON’s understanding of the impacts of the facility on fish and Lake Huron. The SON states that “addressing these gaps is the focus of an ongoing process between SON and CNSC staff,” but that the process is new and that there has been no resolution of these uncertainties yet. The Commission acknowledges the importance of this process, and this collaboration should continue in earnest. At the hearing, the Commission will hear evidence provided by Bruce Power, CNSC staff and intervenors relevant to the impacts to fish and Lake Huron, and will determine at that time whether Bruce Power will adequately provide for the protection of the environment. The concerns of the SON, and the uncertainties which it feels exist, can be brought forward at the hearing. This is especially the case recognizing the flexibility built into the Commission process that allows for the delay of decisions pending the submission of additional information, and opportunities to comment on any such information. At this stage, the Commission does not view these uncertainties as a reason for adjourning the hearing.

Bruce Power opposes the request for an adjournment on the grounds that the CNSC process will provide for meaningful consultation and the SON’s request for additional time is not justified, the CNSC process will provide for a comprehensive environmental review of ongoing operations and life extension activities, and that granting the SON’s indefinite adjournment request would be contrary to CNSC policies and regulations and would cause prejudice to Bruce Power.

On the subject of prejudice, Bruce Power, in its letter responding to the SON request, has stated that

(...) delay and uncertainty would adversely affect Bruce Power’s ability to plan and obtain necessary resources to proceed with MCR (if the Application is approved by CNSC), which in turn could have a range of adverse impacts on Bruce Power including increased costs of MCR. Any significant delay could also result in a range of additional adverse impacts to Bruce Power including the payment of liquidated damages, de-staffing due to delayed activities, and termination of or prejudicial renegotiation of supplier contracts, to name only a few. It could also result in increased electricity costs to Ontario ratepayers as a result of any or all of the foregoing.

Furthermore, Bruce Power has suggested that it would be unfair to change the dates of the hearing now, months after the hearing date was initially announced.

Subsection 20(3) of the NSCA provides that

All proceedings before the Commission shall be dealt with as informally and expeditiously as the circumstances and considerations of fairness permit, but, in any case, within the prescribed period of time.

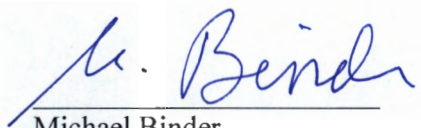
No time period has been prescribed by regulation for the date of a hearing. The Commission is not persuaded that to allow an adjournment would, depending on the length, necessarily be contrary to CNSC policies and regulations; however, the Commission does recognize its duty to carry out its mandate in response to a licence application, and that Bruce Power, as the only party to this hearing, is owed a timely hearing of its application. Without making a determination as to the fact of prejudice that would be suffered, the Commission recognizes the concerns Bruce Power has expressed with an adjournment of the licence renewal hearing, and considers the potential for prejudice to be not inconsequential, and potentially serious.

The SON letter of December 14, 2017 suggests that a decision to hold the hearing as planned would subjugate the SON's Aboriginal and treaty rights to Bruce Power's business interests. The Commission does not agree. The Commission's view is that both can be accommodated within the set timelines, and the Commission retains the authority to provide more time after the Part I hearing, if need be.

The Commission notes that under the CNSC's Participant Funding Program (PFP), \$100,000 has been made available for this public hearing. PFP monies are awarded to the public, and would be available to the SON in this matter, in order to support participation in the licence renewal process. The deadline for submitting an application was November 6, 2017 and the Commission notes that the SON did not apply for PFP funding for this licence application. The Commission acknowledges the SON's concerns and will be included in the decision making process for the Bruce NPP, and in general would encourage the SON and others to utilize the PFP to aid participation efforts in licensing matters such as this.

The Commission directs CNSC staff to continue to meet with the SON and to actively work to address their concerns; more specifically, CNSC staff should work with the SON to determine with precision the issues and concerns the SON would like to pursue, seek to help fill the knowledge gaps that the SON has identified, and create a path forward for dealing with those issues and concerns.

The Commission considers the hearing dates as set to be reasonable and fair, and to provide sufficient time for all participants, including the SON, to prepare. The request to adjourn the hearing dates of March 14, 2018 and May 30-31, 2018 is denied.



Michael Binder
President, Canadian Nuclear Safety Commission

DEC 21 2017

Date