



**BY E-MAIL AND MAIL**

July 23, 2010

Canadian Nuclear Safety Commission  
Attention: Marc Drolet  
280 Slater Street  
P.O. Box 1046, Station B  
Ottawa, ON K1P 5S9  
Email: info@cnsccsn.gc.ca

Dear Mr. Drolet:

**Re: Bruce Power Application for a Licence to Ship Radioactive  
Steam Generators on the Great Lakes**

Lake Ontario Waterkeeper [LOW] is writing in response to Bruce Power's application for a licence to ship 16 decommissioned steam generators from its plant on Lake Huron to Sweden via the Great Lakes. LOW has serious substantive and procedural concerns regarding this proposal. **We recommend that this decision be made by the Commission itself, and ask that the Commission hold a comprehensive public hearing on the matter before rendering a decision regarding Bruce Power's application. We submit that an Environmental Assessment is required for this proposal and should be carried out before a licensing decision is rendered.**

Lake Ontario Waterkeeper thanks the Commission and CNSC staff for considering our submission. We look forward to receiving your response to our recommendations. If you have any questions or comments, please do not hesitate to contact Joanna Bull, counsel for Lake Ontario Waterkeeper, at 416-861-1237 or joanna@waterkeeper.ca.

Yours truly,

Mark Mattson  
Waterkeeper & President

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## CONTEXT

Bruce Power has applied to the Canadian Nuclear Safety Commission for a licence to transport 16 steam generators that were removed from service at Bruce A to Studsvik, Sweden, for processing and recycling. Prior to decommissioning, the steam generators were located adjacent to and above the nuclear reactor at the Bruce plant, penetrating the reactor vault. They are each 12 metres tall, 2.5 metres in diameter, and weigh over 100 tonnes. While in service, one system of tubes running through each generator carried heavy water, which contains tritium, while a second series of tubes held light water that was converted to steam. The contact with heavy water and tritium within the tube system contaminates the generators, so that upon decommissioning, they are considered low-level radioactive waste.

## RECOMMENDATIONS

**The Commission should hold a public hearing on this matter before making a decision.**

Before it issues a licence under the *Nuclear Safety and Control Act* [NSCA], the CNSC must be satisfied that Bruce Power has made adequate provision for the protection of the environment and for human health and safety. Under normal circumstances, if the Commission is required to decide whether to licence an activity with significant potential environmental and social impacts, a public hearing is required pursuant to section 40(5)(a) of the NSCA. This requirement for a public hearing does not extend to decisions by a Designated Officer. However, regardless of whether the decision is made by a Designated Officer or the Commission, **the CNSC can hold a public hearing on any matter within its jurisdiction if a hearing would be in the public interest**, pursuant to section 40(5)(b) of the NSCA.

Public notice and the opportunity to comment is one of the most basic procedural rights guaranteed by Canadian common law, as most other participation rights flow from it. As respected administrative law professor and author David Mullan writes:

It is one of the fundamentals of procedural fairness that those affected by decisions coming within its ambit should in general receive notice of the process about to be

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undertaken in a sufficient degree of detail and in a timely enough fashion to enable the effectuation of their participatory entitlements.<sup>1</sup>

To determine whether Canadians should be entitled to participate in decisions like whether to issue the requested transport licence, the courts consider a number of factors, including:

- whether the decision is final (rather than interim or preliminary);
- whether the decision is important or could have a significant effect on the public's or individual's rights or well-being; and
- whether the public has a legitimate expectation that a public process will occur.

In this case, the decision to issue the licence will be final; the decision could affect millions of people who rely on the Great Lakes for drinking water, fishing, transportation, and recreation; and the public has a legitimate expectation of notice and the right to comment, since this is the minimum level of participation provided by the CNSC when issuing other nuclear-related licences.

The decision could affect everyone who relies on the Great Lakes and the St. Lawrence River in terms of ecological integrity and access for navigation. First, transporting radioactive waste over Lake Ontario presents an obvious risk to the environment when worst-case scenarios are canvassed, including a spill, contact with the generators, or deposition of the generators themselves into the lake. Second, the shipments could result in navigation restrictions on the lakes. If the ships carrying radioactive waste are deemed to be a security threat, either now or in the future, precautions are likely to be required to ensure that the transports are not attacked or compromised. If so, this security is likely to take the form of a restricted perimeter or zone around the boats, cutting off public access to the water. As we enter a new era of dealing with large volumes of radioactive waste from a number of decommissioned reactors, the way this licence is handled by the CNSC will set a precedent for the way waste is handled in the future. Security associated with an increasing number of radioactive waste shipments could pose a serious threat to the right to navigate in Canada.

The CNSC should carefully consider the impacts on drinking water, fish and aquatic ecosystem health, and the safety of the water for recreation in the case of a spill or the deposition of the generators in the lake. Impacts on navigation associated with the shipments, including a consideration of current and future security restrictions, should also

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<sup>1</sup> David J. Mullan (2001) "Essentials of Canadian Law: Administrative Law" (Toronto: Irwin Law) at Chapter 13, p.1. Note: Widely-published in the administrative law area, Professor Mullan's work is often cited by the courts, including the Supreme Court of Canada.

be thoroughly considered. This review should be based on independent evidence and should make use of the vast amount of knowledge held by the public. The most effective way to consider these issues at the requisite level of depth, while enabling and making use of public participation, is to hold a full public hearing on the matter.

**Recommendation 1: The potential implications for the environment and for navigation rights in Canada should be considered by the Commission in the context of a public hearing.**

**The proposed shipment should be considered by the Commission itself to eliminate reasonable apprehension of bias on the part of the Designated Officer.**

Bruce's application for a licence to transport the decommissioned generators is currently under review by a CNSC Designated Officer, instead of by the Commission itself. On July 14, 2010, the CNSC issued an Information Update, stating that the decision has been delegated to a Designated Officer because, "The steam generators do not present a risk to the public, workers or the environment. The level of contamination is very low and confined to the inner parts of the generators".

As described above, this statement does not reflect the full potential risk to the lakes and the people who rely on them. The proposal has the potential to impact the ecological integrity of the water in the case of a spill, contact between the radioactive material and the water, and a full immersion of the waste. It has important implications for the continued navigability of our waterways in a security-focused era. Significant public concern has been expressed in communities along the lake shores, and further afield. The seriousness of the proposal and its potential impacts warrant review by the Commission itself.

Further, there is a reasonable apprehension of bias connected to the Designated Officer. The CNSC's July 14 statement reflects a premature conclusion that is not supported by a completed public review process. Without a thorough review process preceding such a conclusion, the statement appears, on the face of it, to represent bias and prejudgement. The CNSC must not conclude that the proposal does not present a risk to the public *before* evaluating the proposal in an independent and transparent review process. The evident prejudgement by CNSC staff on this matter indicates that the decision should not be left to a Designated Officer on CNSC staff. Instead, in order to eliminate all reasonable apprehension of bias, the CNSC should refer this decision to the Commission.

**Recommendation 2: The decision should be referred to the Commission.**

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## **The Commission should subject this proposal to an Environmental Assessment before proceeding with a licensing decision.**

The CNSC has already considered and approved an Environmental Assessment of a plan to decommission, transport, and store these radioactive steam generators. In the Environmental Assessment Study Report [the Report] prepared in 2005 to support Bruce's application for a refurbishment and life extension at Bruce A, the company directly addressed the transport and storage of radioactive steam generators. At section 3.4.3.1, "Steam Generator Replacement", the Report states that the generators will be removed, sealed, temporarily stored on site, then transferred to the Western Waste Management Facility. Section 3.4.5 of the Report emphasizes that, "transfer to the WWMF will occur entirely within the Bruce Power site and not require the use of public roads".

Bruce Power has now sought approval to change the approved disposal plan drastically, from a fully internal operation that would not even use public roads, to an international transport plan that will see the waste move from Canada to Europe and back again over the Great Lakes, the St. Lawrence River, and the Atlantic Ocean. In order to change Bruce Power's decommissioning plans so radically, a new Environmental Assessment of this proposed activity is required under the *CEAA*.

Even if this were not a drastic change to a previous EA, Bruce Power's proposal would require an Environmental Assessment. Pursuant to section 12.1(a) of the *Law List Regulations* made under the *CEAA*, an Environmental Assessment is required whenever a licence is issued under section 24(2) of the *NSCA*. As Bruce Power requires a licence to transport radioactive waste pursuant to section 24(2) of the *NSCA*, an EA is required. The EA requirement associated with this licence is not satisfied by the 2005 Bruce EA due to the radical changes in the transport plan for the generators.

### **Recommendation 3: An Environmental Assessment should be initiated and carried out before a decision is made with respect to this proposal.**

#### **REQUEST**

Based on the recommendations outlined above, Lake Ontario Waterkeeper asks that the CNSC respond to the following questions in writing and in a timely fashion:

- 1. Will the Commission hold a public hearing, in order to fully consider the potential environmental and navigation-related impacts of the proposal?**
- 2. Will the CNSC refer this decision to the Commission, rather than to a Designated Officer?**
- 3. Will the project be subject to an Environmental Assessment?**

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