



CCEA

AECB



700 University Avenue, Toronto, Ontario M5G 1X6

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Mr. Don Howard
Project Officer
Wastes and Decommissioning Division
Atomic Energy Control Board
P.O. Box 1046, Station B
280 Slater Street
Ottawa, Ontario K1P 5S9

FILE DOSSIER	37-2-2-6
REFERRED TO	Howard

Dear Mr. Howard:

* **Bruce Used Fuel Dry Storage Project:**
Request for CEEA Approval Recommendation

- References:
1. Comprehensive Study for the Bruce Used Fuel Dry Storage Project, Summary Report, prepared by the Atomic Energy Control Board, September 1998.
 2. Letter from D. Howard, AECB, to D.K. Fung, Ontario Hydro, Subject: Environmental Assessment for the BNPD Used Fuel Dry Storage Facility, April 6, 1998, AECB File 37-2-2-6.
 3. Letter from G.C. Andognini, Ontario Hydro, to Dr. A.J. Bishop, AECB, Subject: Commitment to Conduct Environmental Reviews, August 19, 1998.

The purpose of this letter is to request that the AECB formally request the Canadian Environmental Assessment Agency (CEEA) to proceed with completion of the recommendation process for Ontario Hydro's proposed Bruce Used Fuel Dry Storage Project, leading to a decision by the Environment Minister as soon as possible. As recently discussed with you and other staff of the AECB, the environmental assessment (EA) and licensing process is now on the project critical path. The in-service date of July 2002 is essential to support the continued operation of the Bruce nuclear units. Further review through the CEEA process would put the in-service date at risk.

Ontario Hydro has concluded that the proposed project will not cause significant direct environmental effects, taking proposed mitigation into account, based on a comprehensive environmental assessment submitted to the AECB (December 1997 EA submission). We have concluded that the project will be a relatively minor contributor to the cumulative effects of existing and planned actions/physical works at the BNPD site (July 1998 Addendum submission). The overall radiation levels from BNPD will continue to be well below AECB's regulatory limits. These conclusions are supported by AECB's Summary Report (Reference 1) which concluded that "all of the potentially significant direct and cumulative environmental effects of the proposed ... project have been adequately identified and addressed in the Comprehensive Study (EA Report submitted by Ontario Hydro, and) ... those effects can be successfully mitigated through the application of proven engineering technology and environmental management practices". All expert federal departments involved in the AECB-administered inter-departmental review, prior to AECB referral

to CEAA for public review, confirmed their satisfaction with the Comprehensive Study. Based on this review and conclusion, the AECB recommended that CEAA accept the submitted Comprehensive Study "for public review and ministerial decision" (Reference 1).

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We have reviewed all of the public comments received and forwarded by CEAA since the public review period (extended to 60 days from the normal 30-45 days). While we have noted the concern or confusion expressed by some members of the public, and intend to respond to them, we see no grounds for altering our assessment conclusions. The public review did not identify any environmental effects that had not already been accounted for. The review demonstrated broad support from elected representatives. This included written support from all local governments within Bruce County and the provincial MPP for Bruce. In addition, the federal MP for Huron-Bruce had expressed support verbally for the project prior to the public review. Our summary of the public comments and rationale for how these comments should be dealt with are given in Attachment A.

Taking into account the public comments and the broad-based support from elected representatives, we believe the CEAA process should now proceed and the project be approved for the reasons outlined in Attachment A. We propose that the public comments be addressed in parallel with completion of the CEAA process and early stages of the AECB licensing process. Ultimately, we expect that implementation of appropriate monitoring and mitigation measures, as outlined in our EA submissions, will address public concerns about potential effects of the project. This proposal is consistent with AECB staff comments (Reference 2) on Ontario Hydro's EA submission, that is, the remaining technical issues identified by staff of the AECB and expert government departments can be addressed during the subsequent licensing process.

In parallel with completion of the CEAA process, Ontario Hydro undertakes to provide an additional information document by February 28, 1999, including responses to the public comments as summarized by CEAA. We propose that this document be issued to public groups and individuals who commented, as well as to the AECB, CEAA and other government departments involved in the review process. A summary of this commitment is provided in Attachment B.

If further information is required, please contact Mr. Paul Dinner, Manager of System Design & Safety Assessment, Nuclear Waste Management Division, at (416) 592-4935.

Yours truly,

K.E. Nash

K.E. Nash
Vice-President
Nuclear Waste Management

Attach

cc: I. Malek / R. Gerdingh - AECB (Bruce)

ATTACHMENT A

RATIONALE FOR COMPLETION OF CEAA PROCESS

RE: ONTARIO HYDRO'S BRUCE USED FUEL DRY STORAGE PROJECT

Ontario Hydro has reviewed all of the public comments received by CEAA. We see the comments falling into four underlying areas of concern. The following general responses to these areas of concern lead us to conclude that the CEAA process should proceed. We see none of the comments as sufficient grounds for withholding project approval.

1. Project Design Modification – Ontario Hydro acknowledges that, since the initial round of environmental assessment (EA) submissions (January and April of 1997), it has modified some details of the design concept for the proposed project (now more like the design of the existing used fuel dry storage facility at Pickering). This may have confused some who undertook only a casual review of the current EA submissions (December 1997 and July 1998). However, careful review of these latest submissions reveals that they do describe the recommended design concept which was selected from the alternatives considered. Furthermore, the environmental implications of these design modifications were anticipated in the December 1997 EA and confirmed in the July 1998 EA Addendum. All expert federal departments involved in the AECB-administered inter-departmental review confirmed their satisfaction with Ontario Hydro's EA submissions and responses to their comments. In summary, it is Ontario Hydro's position that the proposed project design has been adequately described, and related environmental effects assessed, and that any further design review should occur as part of the AECB licensing process.

2. Project Purpose vs Long-Term Used Fuel Management – The purpose of the proposed project (interim storage of used fuel from Bruce nuclear units only) has been clearly documented in the EA submissions from the outset and communicated to stakeholders consistently in other ways also (newsletters, presentations, guided site visits, etc.). The length of the interim storage period will depend on the future availability of a central national repository for permanent safekeeping of the used fuel. The federal Minister of Natural Resources recently announced the initial direction of a national program for long-term management (and ultimately disposal) of Canada's used nuclear fuel. Specifics of technical direction, implementation process and timing of this long-term program are beyond Ontario Hydro's control. Consistent with plans in other countries which have nuclear energy programs, Ontario Hydro will maintain geological disposal as the technical basis of its reference plan for long-term used fuel management, pending the outcome of a comparative study of alternative long-term management approaches, as directed by the federal Minister. In summary, while Ontario Hydro remains committed to long-term management of its used fuel and radioactive wastes in a safe and environmentally, socially and financially responsible way, it must also manage this used fuel and wastes in the interim period. The proposed project is intended to fulfill that need at Bruce.

3. BNPD / Cumulative Environmental Effects – Most of the public comments relating to environmental effects (including adequacy of baseline data, fisheries/aquatic effects, radiological/health effects, cumulative effects, safety/security, mitigation, monitoring, etc.) appear to be more concerned with ongoing effects of existing BNPD facilities and operations than with the potential incremental effects of the proposed project. Ontario Hydro has included cumulative effects assessment in its EA submissions from the outset. However, recognizing public concerns in this area, as well as direct and indirect comments from CEAA staff, Ontario Hydro commissioned a supplementary BNPD cumulative effects assessment and submitted it as part of the July 1998 EA Addendum. This supplementary study was innovative and comprehensive in scope, following a recent CEAA draft practitioners guide (December 1997), and projects as far into the future as reasonable based on approved Ontario Hydro plans. It concluded that the proposed project will be a relatively minor contributor to the cumulative environmental effects of existing and planned actions/physical works at the BNPD site, thus supporting the conclusion of Ontario Hydro's EA. In addition, independent of the Bruce Used Fuel Dry Storage Project, Ontario Hydro has committed to carrying out an environmental review of the entire BNPD complex (Reference 3). The scope of public involvement in this BNPD review is presently under review.

4. First Nations Issues – In June 1997, Ontario Hydro has already committed to working with representatives of the Nawash and Saugeen First Nations to develop mutually acceptable resolutions to specific issues of concern to the First Nations (in particular, issues related to archaeological assessment / aboriginal burial sites, Lake Huron fisheries, and other concerns). Joint work on these issues is well under way. The June 1997 commitment included an undertaking to continue to meet with the Chiefs and other representatives of these First Nations whenever required to address any concerns that may arise. Constitutional issues raised in comments by the First Nations are beyond the responsibility of

Ontario Hydro. Land claims and associated assertions of Aboriginal rights are more appropriately addressed in ongoing litigation before the civil courts. 2679

Precedents – We have identified some precedents from recent federal EA / licensing experience with other projects which we submit are relevant to the four points of rationale presented above. We indicate, by the numbers given in parentheses in each heading below, which particular point is supported by each of these precedent cases (eg. 1, 3):

□ **Stanleigh Uranium Mine Decommissioning Project – CEAA Review Process, 1997 (1, 3)**

The AECB responded to an intervenor's concerns about (i) lack of design detail (for the proposed waste management area containment dam), (ii) effectiveness of the basic waste management concept ("wet cover"), and (iii) uncertainty in ecosystem modelling and possible underestimation of risk, respectively, by committing to:

- conduct a detailed design evaluation during the licensing process;
- ensure that waste management performance monitoring is carried out on an ongoing basis and that other options would be considered if such monitoring were to indicate the possibility of unreasonable risk to the health and safety of people and the environment; and
- ensure that any radiological effects in the local environment are addressed through continuing site-specific monitoring and re-evaluation as proposed in the proponent's CSR submission.

Furthermore, in response to the intervenor's concern that the proponent's CSR omitted certain potential consequences of low-probability abnormal events (such as a major dam failure), the AECB responded that the probability of such events is very small and any related short-term consequences could be mitigated using current technology.

□ **Express Pipelines Ltd et al / Alberta Wilderness Association - Federal Court, 1996 (3)**

The Court of Appeal decision in this case established that no information about the probable future effects of a project can ever be complete or exclude all possible future outcomes. The decision states that the principal criterion set by statute is the 'significance' of environmental effects of the proposed project, involving opinion and judgement as well as assessment against objective standards.

□ **Irving Whale Barge Recovery Project – Federal Court, 1996 (3)**

The Court decision in this case acknowledged that some unknowns or uncertainties may derive from the nature of a project, rather than failure of a proponent to consider them, and found that the proponent had demonstrated a need to proceed with the proposed project to avoid greater potential harm. The judge concluded that "risk assessment is an attempt to quantify the judgement of individuals, knowledgeable in the field, in an area where quantification is simply not possible".

We interpret these precedents as supporting our proposal, in support of the Bruce Used Fuel Dry Storage Project, that the remaining public concerns be addressed during the AECB licensing process. We believe they also illustrate that the AECB is entitled to draw reasonable inferences, regarding potential environmental effects of a proposed project design, without having such inferences necessarily supported in complete detail by the proponent's submission.

ATTACHMENT B

SUMMARY OF REGULATORY COMMITMENTS MADE TO THE AECB IN THIS LETTER

No.	Commitment	Date to be Completed
1	To prepare an additional information document, including responses to public comments as summarized by CEAA, which would be issued to public groups and individuals who commented, as well as to the AECB, CEAA and other government departments involved in the review process.	February 28, 1999