

NORTHWATCH

June 18th, 2008

Jennifer Clark, Panel Analyst
Canadian Environmental Assessment Agency
160 Elgin Street, Place Bell Canada
Ottawa, Ontario K1A 0H

Sent by email

Re. Federal Environmental Assessments for the Bruce Power New Build and Ontario Power Generation's Deep Geologic Repository for Radioactive Wastes

Northwatch Comments on Joint Panel Review Agreement, Panel Terms of Reference and Draft Environmental Impact Statement Guidelines

1.0 Northwatch's Interest in the Projects and the Panel Reviews

Northwatch is a public interest organization concerned with environmental protection and social development in northeastern Ontario. Founded in 1988 to provide a representative regional voice in environmental decision-making and to address regional concerns with respect to energy, waste, mining and forestry related activities and initiatives, we have a long term and consistent interest in the nuclear chain, and its serial effects and potential effects with respect to northeastern Ontario, including issues related to uranium mineral exploration and mining, uranium refining and nuclear power generation, including on the Bruce peninsula, and various nuclear waste management initiatives and proposals.

Northwatch was a full time intervenor in the Environmental Assessment of Ontario Hydro's Demand Supply Plan (1989-1993) and intervened in Ontario Energy Board reviews HR-22 and HR-23 with respect to electricity matters. Northwatch was also a full time participant in the panel review of the decommissioning of uranium mine tailings in Elliot Lake in the mid-1990's, and in the panel review of Atomic Energy of Canada Limited's Geological Disposal Concept (1988 to 1998). Northwatch is currently intervening in the review by the Ontario Energy Board of Ontario Hydro's 20 Year Integrated Power System Plan.

We have a longstanding interest in the management of nuclear waste, as well as other environmental and social impacts of using nuclear power for the purpose of electricity generation. Our interests are primarily with respect to the impacts and potential impacts of the nuclear chain on the lands, water, and people of northeastern Ontario.

The proposed geological repository for the disposal of nuclear wastes at the Bruce Nuclear Site is of interest both because of its precedent setting nature and because of its close proximity to Lake Huron, and the potential for adverse effects on the North Channel and North Shore of Lake Huron, Manitoulin Island, and the broader Great Lakes ecosystem.



Box 282, North Bay ON P1B 8H2 · tel 705 497 0373 · fax 476 7060
northwatch@onlink.net www.northwatch.org

The proposal by Bruce Power for the site preparation and the construction and operation of up to four new nuclear reactors at the Bruce Power Nuclear site, located on the eastern shore of Lake Huron is of interest because the project is in close proximity to Lake Huron, there are potential adverse effects on the North Channel and North Shore of Lake Huron, Manitoulin Island, and the broader Great Lakes ecosystem as a result of the operation of the reactors and the potential for catastrophic accident, there are anticipated deleterious effects of nuclear power generation on the environment, including the environment of the Lake Huron watershed which we share with the residents of the Bruce Peninsula and the Great Lakes community more broadly, and the proposed four additional reactors will generate large quantities nuclear fuel waste for which there is no acceptable means of long term management; as residents of northeastern Ontario we have an interest in this matter given past proposals to bury nuclear waste in northern Ontario and continued concerns that these proposals may be resurrected by the nuclear industry or others in partnership with the nuclear industry

During Phase I of the Federal Environmental Assessments for the Bruce Power New Build and Ontario Power Generation's Deep Geologic Repository for Radioactive Wastes Northwatch convened seven community meetings to discuss the two proposed expansions of nuclear activity at the Bruce Nuclear Generating Station, produced background material and a powerpoint presentation and made these available in hard copy to all workshop participants and others requesting the material as well as providing key materials on-line and by email, coordinated with other intervenors, consulted with Northwatch's membership, and reviewed the draft Joint Panel Review Agreement, Panel Terms of Reference, and draft EIS guidelines for each of the projects, as well as the project descriptions and other project related material available from the proponents or otherwise in the public domain. The following comments are a product of the above noted efforts.

2.0 Northwatch Review of the Joint Panel Review Agreement and Panel Terms of Reference

To fulfill the purpose and provisions of the Canadian Environmental Assessment Act and to meet the expectations of Canadians, the review panels appointed for the environmental assessment of the Bruce Power New Build and Ontario Power Generation's Deep Geologic Repository for Radioactive Wastes must be independent, objective and impartial, and must also be perceived as such.

In contrast to what is currently outlined in the draft Joint Panel Review Agreement:

- ⌘ All members should be appointed by the Minister of the Environment
- ⌘ If, despite the good reasons for all members being appointed by the Minister of the Environment, some members are appointed by the Canadian Nuclear Safety Commission, the CNSC appointees should form a minority of panel members
- ⌘ The Chair of the Panel should be appointed by the Minister of the Environment
- ⌘ The Environmental Assessment Process should be independent of the licensing process and vice versa; therefore, the EA panel should not act as the Commission for the purpose

of issuing the first license. If an EA approval is granted, the licensing decisions should be made by the full Commission, as per standard practice

2.1 Joint Review Panel Agreement

Draft JRP Agreement	Northwatch Comment
2.0 ESTABLISHMENT OF THE JOINT REVIEW PANEL	
2.1 A process is hereby established to create a Joint Review Panel that will: a) constitute a review panel pursuant to sections 40, 41 and 42 of the CEAA for the purposes of carrying out an environmental assessment of the Project; and b) constitute a panel of the Commission, created pursuant to section 22 of the NSCA, for the purposes of the review of the Licence Application pursuant to section 24 of the NSCA.	We strongly disagree with the Review Panel then becoming the Commission for the purpose of reviewing and potentially issuing the first licence. The licensing process should be separate from and entered into only following the completion of the EA process; as outlined above, this hybridization of the Review Panel and CNSC functions erodes the independence of the review panel, limits the “pool” of potential panel members, and - in the event that an EA approval is granted and th project proceeds to a License Application – it would result in the first License Application not being heard by only a small minority of the seven Commission members. At issue – but not the only solely – is the independence and objectivity of the Canadian Nuclear Safety Commisssion – which self-describes as being part of the nuclear industry – and the potential for a Panel to be independent and objective when operating in a climate that is almost wholly controlled by the CNSC.
2.2 Nothing in this Joint Review Panel Agreement shall be construed as limiting the ability of the Joint Review Panel to have regard to all considerations that appear to be relevant pursuant to section 24 of the NSCA and to include a consideration of the factors set out in sections 16 and 16.1 of the CEAA.	
Recommendation: The Review Panel – and Process – should be wholly separate from and fully precede the consideration of any and all applications for permits and /or licenses.	
3. CONSTITUTION OF THE JOINT REVIEW PANEL	
3.1 The Joint Review Panel will consist of three members. Two members, including the Joint Review Panel Chair, will be appointed by the President of the Commission with the approval of the Minister of the Environment.	For reasons outlined in our opening discussion about the importance of the Panel being independent and objective, we disagree with Panel members being appointed by the CNSC; notwithstanding our general disagreement with the CNSC appointing members to the panel, we strongly disagree with CNSC appointing the Chair

Recommendation: Panel members should be appointed by the Minister of the Environment; the Responsible Authority, including the CNSC, may make suggestions to the Minister of individuals whom they consider to have relevant expertise, with the decision resting with the Minister.	
3.2 The Minister of the Environment will propose to the President of the Commission a candidate as a third member of the Joint Review Panel who may also serve as a temporary member of the Commission.	Notwithstanding our above stated disagreement with Panel members being appointed by the CNSC, we strongly disagree with the CNSC appointees comprising a majority of the Panel
Recommendation: Panel members should be appointed by the Minister of the Environment; the majority of expertise should related to the natural environment, with some members having particular expertise in nuclear matters, including radiation and health, and in related technologies.	
3.3 Upon approval by the President of the Commission of a candidate as a third member of the Joint Review Panel who may also serve as a temporary acting member of the Commission, the President of the Commission will recommend to the Minister of Natural Resources that the Minister of Natural Resources recommend the proposed candidate to the Governor in Council for the appointment of that proposed candidate as a temporary member of Commission.	Notwithstanding our above stated disagreement with Panel members being appointed by the CNSC, we strongly disagree with the three person panel then becoming the “Commission” for the purpose of reviewing and potentially issuing the first licence; the licensing process should be separate from and entered into only following the completion of the EA process; further, this provision does not strongly state but certainly implies that the CNSC appointees will be drawn from among current CNSC members, which is a very limited number of candidates to choose from, particularly to populate two review panels.
Recommendation: The Review Panel – and Process – should be wholly separate from and fully precede the consideration of any and all applications for permits and /or licenses.	
3.4 If appointed by the Governor in Council as a temporary member of Commission, the selected candidate will then be appointed by the Minister of the Environment as a member of the Joint Review Panel.	The appointments should be made by the Minister of the Environment; the notion of the President of the CNSC having power to approve (or disapprove) of the Minister’s appointments erodes both the Minister’s powers and responsibilities and the independence and credibility of the Review Panel.
Recommendation: Members of the Review Panel should be appointed by the Minister of the Environment.	
3.5 The members of the Joint Review Panel are to be unbiased and free of any conflict of interest in relation to the Project and are to have knowledge or experience	While we agree with what we will presume to be the intent of this provision, it should be more broadly stated: the panel members must be free of any conflict of interest with respect to not just the “project” but also the proponent, the technology being applied, and from the

relevant to the anticipated environmental effects of the Project.	nuclear industry more generally. The panel members should – collectively – have knowledge with respect to the environmental and human health effects, and social effects.
Recommendation: Members of the Review Panel should be appointed by the Minister of the Environment based on their objectivity, freedom from conflict of interest, and expertise.	
4 CONDUCT OF THE REVIEW	
4.3 The Joint Review Panel shall conduct the Review in accordance with the Terms of Reference attached as an Appendix to this Joint Review Panel Agreement in a manner that:	Our more detailed comments on the Terms of Reference for the Review(s) are provided in later sections of this submission.
a) discharges the requirements set out in the CEAA; and,	
b) permits it to obtain the information and evidence required for it to consider the Licence Application.	As stated above, we strongly disagree with the Review Panel also acting as the Commission for the purposes of considering the License Application, for the reasons stated above but also because it would result in the first License Application not being heard by the full Commission. The 7 members of the Commission bring varied perspectives and expertise, and all members should be involved in any review of a License Application related to these projects.
Recommendation: The Review Panel – and Process – should be wholly separate from and fully precede the consideration of any and all applications for permits and /or licenses.	
4.4 The Joint Review Panel shall have all the powers and duties of a review panel described in section 35 of the CEAA.	
Recommendation: The Review Panel – and Process – should be wholly separate from and fully precede the consideration of any and all applications for permits and /or licenses.	
4.5 As a panel of the Commission, the Joint Review Panel shall also have the powers and duties of the Commission described in section 20 of the NSCA and the Rules of Procedure.	As stated above, we strongly disagree with the Review Panel also acting as the Commission for the purposes of considering the License Application, for the reasons stated above but also because it would result in the first License Application not being heard by the full Commission. The 7 members of the Commission bring varied perspectives and expertise, and all members should be involved in any review of a License Application related to these projects.

Recommendation: The Review Panel – and Process – should be wholly separate from and fully precede the consideration of any and all applications for permits and /or licenses.	
5 SECRETARIAT	
5.3 A Secretariat will be formed consisting of professional, scientific, technical or other Agency and Commission personnel necessary for the purposes of the Review.	The functions of the Secretariat should be largely administrative in nature. The Secretariat should not be providing the panel with information, opinion, or technical information or interpretation. The Secretariat must be demonstrated to be independent and unbiased, and must be operated in such a manner as to ensure both the reality and the perception of independence.
Recommendation: The Secretariat's functions should be largely administrative.	
5.4 The Secretariat will provide information to the Joint Review Panel orally and in writing during the Joint Review Panel Hearings.	Any and all information provided to the Panel on matters beyond basic administration must be on the public record, with full public disclosure.
Recommendation: The Secretariat should not be providing the Panel with substantive information. Any communications other than those of a purely administrative nature must be on the public record.	
5.5 The personnel who comprise the Secretariat shall not be considered to be Intervenor.	While not considered “intervenor” the same rules of disclosure should apply to Secretariat communications as would apply to intervenors. Similarly, any communication between the proponents or their agents and members of the Secretariat must be matters of public record.
Recommendation:	
5.6 The Commission will provide its offices for the conduct of the activities of the Joint Review Panel and the Secretariat.	Given the nature of their work with the CNSC, CNSC staff are accustomed to having ongoing communications and regular interactions with the proponent. This is inappropriate within a review process. Further, The Secretariat must be demonstrated to be independent and unbiased, and must be operated in such a manner as to ensure both the reality and the perception of independence.
Recommendation: The CNSC should not provide offices for the Review Panel and Secretariat; these should be provided by CEAA, making use of CEAA's experience and expertise in Review Panel support, or housed independently.	
5.7 The Secretary of the Commission, or his designate, will act as Secretary to the Joint Review Panel and as co-manager of the Secretariat.	The CNSC lacks sufficient independence – and perception of independence – to perform this function. CEAA has experience and expertise in the management of a range of review panels,

5.8 The Agency shall appoint a panel manager as co-manager of the Secretariat.	and should be relied upon for these functions. CEAA should host the Secretariat, provide the majority of staff support for the Secretariat, and should name the Panel Manager.
Recommendation: CEAA should appoint the Panel Manager, who will act as Secretary to the Review Panel.	
6 RECORD OF THE REVIEW	
6.3 Subject to section 55 and subsections 35(4), and 35(4.1) of the CEAA, the Public Registry will include all submissions, correspondence, hearing transcripts, exhibits and other information received by the Joint Review Panel and all public information produced by the Joint Review Panel relating to the Review.	As noted above, the Secretariat should not be providing the panel with information, opinion, or technical information or interpretation. However, any and all information provided to the Panel on matters beyond basic administration must be on the public record, with full public disclosure. Similarly, any communication between the proponents or their agents and members of the Secretariat – or Panel members - must be matters of public record. This is consistent with Section 55 (1)(b)(ii) of the CEAA, which describes the grounds for including information on the public registry in terms of what is required for the public to participate effectively in the environmental assessment. Logically and practically, the public cannot participate effectively in a public review during which they are unaware of what “case” they are responding to or what information the Panel is considering as the basis of their decision. Transparency and openness are fundamental principles which must be upheld throughout the environmental assessment process, including through the full disclosure of what evidence or opinion the Panel is being provided as a basis for their decision-making, from the Secretariat, the proponent, or the public.
6.4 The internet site component of the Public Registry will be maintained by the Secretariat during the course of the Review in a manner that provides for convenient public access, and for the purposes of compliance with sections 55 to 55.5 of the CEAA.	
6.5 A project file will be maintained by the Secretariat during the course of the Review in a manner that provides for convenient public access, and for the purposes of compliance with sections 55 and 55.4 of the CEAA. This project file will be located in the offices of the Secretariat.	
Recommendation: All communications to the Panel must form part of the public record, including communications beyond administrative matters between the Secretariat and the Panel.	
7 JOINT REVIEW PANEL REPORT	
7.1 On completion of the assessment of the Project, the Joint Review Panel will prepare a Joint Review Panel Report.	As stated above, we strongly disagree with the Review Panel then becoming the Commission

7.2 The Joint Review Panel will convey the Joint Review Panel Report in writing in both official languages to the Minister of the Environment who will then publish the report.	for the purpose of reviewing and potentially issuing the first licence; the licensing process should be separate from and entered into only following the completion of the EA process; as outlined above, this hybridization of the Review Panel and CNSC functions erodes the independence of the review panel, limits the “pool” of potential panel members, and - in the event that an EA approval is granted and the project proceeds to a License Application – it would result in the first License Application not being heard by only a small minority of Commission.
7.3The panel of the Commission will take a course of action with respect to the Licence Application in accordance	
Recommendation: The Review Panel – and Process – should be wholly separate from and fully precede the consideration of any and all applications for permits and /or licenses.	

2.2 Panel Terms of Reference

2.2.1 Part II, Components of the Review

NB	DGR	Draft Terms of Reference	Northwatch Comment
--	--	Scoping	Absent from the description of the “components” of the review is a scoping exercise. Public participation is fundamental to reviews conducted under CEAA, as referenced in the preamble, purposes and throughout the Act. The absence of any scoping exercise in advance of the development of the draft terms of reference and the draft EIS guidelines is a significant shortcoming, and must be mitigated now through the addition of a scoping exercise after the Panel has been appointed but prior to finalizing the project description and EIS guidelines.
I	I	Within 30 days of the close of the public comment period regarding the draft Environmental Impact Statement Guidelines, the Minister of the Environment shall, following consultation with the President of the Commission and after taking	Finalizing the EIS guidelines prior to a scoping exercise which involves the public – including through a scoping hearing or meeting and an opportunity to provide written comment on the scope of the project and its review – and prior to the appointment of the review Panel is inconsistent with good environmental practice and with public

		into account the comments received by the public and the SON, issue the Environmental Impact Statement Guidelines.	expectations, which are based on the provisions of the Act and past experience.
2	2	The Parties shall require the Proponent to prepare the Environmental Impact Statement in accordance with the Environmental Impact Statement Guidelines issued by the Minister.	The FIS guidelines are issued by the Minister, but should not be issued prior to the Panel being appointed and the Panel having significant input into the Minister's decision. When raised during the review of the Panel Terms of Reference and the FIS draft guidelines, CEAA staff indicated that the Panel could remedy any shortcoming in the FIS guidelines by issues additional requests for information. This is an inefficient and unnecessary extra step being added to the review process, and is one which could be avoided by having the Panel in place and providing comment prior to the finalizing of the FIS guidelines.
3	3	The Joint Review Panel will ensure that the Environmental Impact Statement is distributed for examination and comment by the public and the SON to determine whether additional information should be provided before convening the Joint Review Panel Hearings.	The TOR should make it explicit that the FIS is being distributed for comment on the conformity of the FIS to the FIS guidelines, and that a request for comments on the merit of the project and the information provided will be in a subsequent step in the review process.
4	--	The Joint Review Panel will conduct a conformity check to determine whether the Environmental Impact Statement contains sufficient information in response to the Environmental Impact Statement Guidelines. If the Joint Review Panel determines that the Environmental Impact Statement does not contain sufficient information, it will issue instructions to the Proponent for the submission of additional information. The proponent will submit any	The Terms of Reference for the DGR does not include this discussion of the conformity review. The Terms of Reference for the New Build include this description of the conformity review, and in item #10 indicate that a time period of 6 months is to include the conformity review, technical analysis and the public notice period for the Joint Review Panel Hearings. CEAA / CNSC staff presentations have created an impression that their will be 6 months for the conformity review, which is inconsistent with the text of the TOR. At least 6 months should be provided for the conformity review, with a clear

		additional information necessary to satisfy the Joint Review Panel.	timeline issues as part of the TOR.
--	4	The Joint Review Panel shall make the Environmental Impact Statement available for public examination and comment for a period of 90 days.	The Terms of Reference should make the purpose of this review period explicit, ie for the conformity review. The review period of just three months is inadequate, particularly in contrast the the amount of time the proponent is requiring to prepare the EIS following release of the EIS guidelines.
--	5	The Proponent shall provide to the Joint Review Panel its response to the written comments regarding the Environmental Impact Statement not later than 30 days following completion of the period for public examination and comment.	This timeline is unclear, in that it states that the Proponent is to provide its response within 30 days following the completion of the period for public examination and comment, but does not appear to allow time following the public comment for the panel to review the public comments and issue instructions to the proponent.
5	--	Once the Joint Review Panel determines that the Environmental Impact Statement sufficiently conforms to the Environmental Impact Statement Guidelines, it will issue instructions and set a timetable for the technical review that will include opportunities for public comment and participation.	The terms of reference should clearly state what the public opportunities for comment and participation in the review process.
6	9	Should the Joint Review Panel identify deficiencies during the technical review, and in consideration of any comments received from the public and the SON, Federal Authorities, other Jurisdictions, or the proponent, the Joint Review Panel may obtain any additional information it deems necessary.	It should be clearly stated that the technical review follows the conformity review, and that the additional information required could be in addition that information initially required by the EIS guidelines.
7	5	Written comments obtained pursuant to clause 3/7 shall be made public and provided to the Proponent by the Joint	

		Review Panel.	
8	--	The Joint Review Panel will review the information available on the Public Registry and comments received from the public and determine whether all the information available is sufficient to proceed to the Joint Review Panel Hearing phase of the process.	Comments from the public should form part of the public registry; it is, therefore, incorrect to say that the Panel will review the information on the public registry AND comments received from the public.
9	10	The Joint Review Panel shall schedule and announce the start of the Joint Review Panel Hearings once it is satisfied that it has obtained the necessary information; it shall provide public notice of 60 days prior to the start of the Joint Review Panel Hearings.	Notice of 60 days is inadequate, given that the hearings will require a major investment of time for public participants, which could require that work, family and travel arrangements be made or remade to accommodate the hearing schedule. The notice should be no less than 90 days, and should include a hearing schedule, including the dates and times of all anticipated hearing sessions.
10	--	A maximum 6-month period is provided for the initial conformity review of the Environmental Impact Statement, technical analysis and the start of the public notice period for the Joint Review Panel Hearings, in addition to the time taken by the proponent for responses to any information requests from the Joint Review Panel.	CEAA / CNSC staff presentations have created an impression that their will be 6 months for the conformity review, which is inconsistent with the text of the TOR. At least 6 months should be provided for the conformity review, with a clear timeline issues as part of the TOR.
11	7	At the request of the Joint Review Panel, the Secretariat shall provide written and oral professional, scientific, technical or other assessment to the Joint Review Panel.	Any and all information provided to the Panel on matters beyond basic administration must be on the public record, with full public disclosure. This is consistent with Section 55 (1)(b)(ii) of

12	8	The Joint Review panel may secure the services of independent experts to provide information on and help interpret technical and scientific issues and issues relative to community knowledge and aboriginal traditional knowledge.	the CEAA, which describes the grounds for including information on the public registry in terms of what is required for the public to participate effectively in the environmental assessment. Logically and practically, the public cannot participate effectively in a public review during which they are unaware of what “case” they are responding to or what information the Panel is considering as the basis of their decision.
13	11	The Joint Review Panel shall hold the Joint Review Panel Hearings within the Municipality of Kincardine.	While it is reasonable to hold the majority of sessions within the Municipality of Kincardine, sessions should also be held in other communities which are potentially affected and/or there is a high level of public concern, including but not limited to Toronto, Owen Sound, Manitoulin Island and the North Shore of Lake Huron.
14	12	The Joint Review Panel shall deliver its Joint Review Panel Report to the Minister of the Environment within 90 days following the close of the Joint Review Panel Hearings	The mandate of each of the Review Panels should end with the submission of the Panel report to the Minister of the Environment following the close of the Review Panel hearings.

Recommendations:

1. A scoping exercise should be added as a key process component, including opportunities for public to comment in writing and to participate in a scoping hearing or meeting.
2. The EIS guidelines should not be finalized until after the Panel has been appointed and the Panel has had the opportunity to review the draft guidelines and public comments, and provide the Minister with input into the final guidelines.
3. The Terms of Reference and the Review timeline(s) should clearly set out the stages of the review, including scoping, finalizing the EIS guidelines, conformity review, technical review and public hearing.
4. The time allowed for the conformity review of the EIS for each project should not be less than 6 months.
5. The notice of the public hearing for each of the project reviews should not be less than 90 days.
6. Information or opinions provided to the Review Panel by the Secretariat, the proponent, or experts retained by the Panel should be part of the public record.

7. Public hearing should not be limited to the Municipality of Kincardine, but should also be held in Toronto, Owen Sound, Manitoulin Island and the North Shore of Lake Huron.
8. The Review Panel's mandate should end with the submission of their report to the Minister of the Environment.

2.2.2 Part III – Procedures

Draft TOR	Northwatch Comments
1. The Joint Review Panel Hearings will be conducted in accordance, and the Joint Review Panel shall comply with the NSCA and the Rules of Procedure.	The Draft ToR are unclear on this point; reviewers are left to speculate that the reference is to the CNSC Rules of Procedure, but this is not clear; further, the Panel should be adhering to EA practices rather than the practice of the CNSC in its licensing exercise, and, finally, there are inconsistencies between the CNSC rules and the rules included within the draft TOR.
2. The Joint Review Panel, when appointed, will issue Directions on Procedure in accordance with the Rules of Procedure and in conformity with the provisions of this/the Joint Review Panel Agreement.	
3. As a panel of the Commission, the Joint Review Panel may vary, pursuant to Rule 3, the Rules of Procedure to follow throughout the Joint Review Panel Hearings.	The Review Panel is a “Joint Review Panel” and is <u>not</u> a “panel of the commission”, rather, it is an environmental assessment review panel, in which it is currently proposed that the CNSC play a dominant role.
4. Subject to article 12 of this/the Joint Review Panel Agreement and articles 25 and 26 of this Appendix, the Joint Review Panel Hearings shall be public and the Review will provide opportunities for timely and meaningful participation by the public and the SON.	
5. For the purposes of CEAA or the NSCA, the Joint Review Panel Hearings shall be public unless the Joint Review Panel is satisfied after representations made by a witness	The notion of some of the evidence being treated as “confidential” is unacceptable and runs counter to any and all reasonable interpretations of openness and transparency. As stated elsewhere in these

<p>that specific, direct and substantial harm would be caused to the witness or specific harm to the environment by the disclosure of the evidence, documents or other things that the witness is ordered to give or produce, or that information to be presented involves national or nuclear security; the information is confidential information of a financial, commercial, scientific, technical, personal or other nature that is treated consistently as confidential and the person affected has not consented to the disclosure; or the disclosure of the information is likely to endanger the life, liberty or security of a person.</p>	<p>submissions, all evidence and opinion provided to the review panel during their review of the proposed project must be on the public record. If it cannot be entered into the public record then it should not be brought before the Panel for their consideration and it should have no bearing on the decision that they render.</p>
<p>6. Intervenor in the Joint Review Panel Hearings will be limited to a 40 minute presentation. Each presentation may be followed by a question and answer period led by the Joint Review Panel, followed by questions from other Intervenor. Additional time for presentations or questions may be granted at the discretion of the Joint Review Panel Chair.</p>	<p>This provision is unclear. To date, there has been no outline of the presentation schedule and how information is to be presented and reviewed. Presumably, there will be several panels or themes of evidence, with the proponent and intervenors making submissions on that theme or broad topic. To limit intervenors to 40 minutes per theme – with exceptions – may be reasonable, but to limit intervenors to one forty minute presentation for the entire review hearing is wholly and completely unreasonable. Further, for those intervenors who are presenting expert evidence, forty minute may be inadequate. Finally, there must be a measure of fairness: if the public intervenors are limited to 40 minutes, so should the proponent.</p>
<p>7. Questions will be directed through the Joint Review Panel Chair who may subsequently allow a participant to put questions directly to the presenter. Where a person does not adhere to the procedures and the direction of the Joint Review Panel Chair, the Joint Review Panel Chair will have the</p>	<p>While this approach to questioning has been used in other panel review hearings without undue damage to the public's ability to participate effectively, this is a highly discretionary measure and is not reliably protective of the public's right to participate. This is particularly a concern given that the CNSC "culture" of public hearings differs so dramatically from the</p>

authority to refuse to permit further questioning from that person.	culture of environmental assessment hearings. The TOR should be amended to provide more certainty for public rights of participation, including participation in the questioning of evidence and opinions presented in the public hearing.
8. The Joint Review Panel Chair may limit or exclude questions or comments that fall outside the mandate of the Joint Review Panel, are repetitive, irrelevant, or immaterial.	Again, , these are a highly discretionary measures and are not reliably protective of the public's right to participate. This is particularly a concern given that the CNSC "culture" of public hearings differs so dramatically from the culture of environmental assessment hearings. The TOR should be amended to provide more certainty for public rights of participation, including participation in the questioning of evidence and opinions presented in the public hearing.
9. The Joint Review Panel Chair may limit discussion that exceeds the time limit.	

2.2.3 Part IV – Scope of the Environmental Assessment and Factors to be Considered in the Review

Draft TOR	Northwatch Comments
<p>I. The Review will include a consideration of the following factors listed in paragraphs 16(1)(a) to (d) and in subsection 16(2) of the CEAA:</p> <p style="padding-left: 40px;">a) The environmental effects of the Project, including the environmental effects of malfunctions or accidents that may occur in connection with the Project and any cumulative environmental effects that are likely to result from the Project in combination with other projects that have been or will be carried out;</p> <p style="padding-left: 40px;">b) The significance of the effects referred to in paragraph a;</p> <p style="padding-left: 40px;">c) Comments from the public that are received during the Review;</p>	<p>We are satisfied that the list of factors set out in the Terms of Reference, Part IV, Section I is consistent with paragraphs 16(1)(a) to (d) and in subsection 16(2) of the CEAA</p>

<ul style="list-style-type: none"> d) Measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the Project; e) The purpose of the Project; f) Need for the Project; g) Alternatives to the Project; h) Alternative means of carrying out the Project that are technically and economically feasible and the environmental effects of any such alternatives means; i) The requirements of a follow-up program in respect of the Project; j) The capacity of renewable resources that are likely to be significantly affected by the Project to meet the needs of the present and those of the future; and k) Consideration of Community knowledge and aboriginal traditional knowledge. 	
--	--

3.0 Review of Draft Environmental Impact Statement Guidelines

3.1 General Comments

To fulfill the purpose and provisions of the Canadian Environmental Assessment Act and to meet the expectations of Canadians, the guidelines for the Environmental Impact Statement should direct the proponent to provide a full discussion of the need for the project, alternative means of meeting that need, alternative means of carrying out the undertaking, and the cumulative effects of the project.

The EIS guidelines for the environmental assessment of the Bruce Power New Build and the Deep Geological Repository should direct the proponents to provide:

- /// A full discussion of environmental impacts on all parts of the environment, including humans, rather than limiting it to the short list of species listed as “valued ecosystem components” in the draft EIS guidelines
- /// a discussion of radiation and radioactivity that is broader than the natural and background sources at the Bruce station, ie the discussion should be at least the Great Lakes watershed
- /// a discussion of Aboriginal communities which includes at least the communities in the Lake Huron watershed

3.2 Review of Draft Environmental Impact Statement Guidelines for the Bruce Power New Build

The EIS guidelines for the environmental assessment of the Bruce Power New Build should direct Bruce Power to provide:

- ✍ a clearly stated discussion of the need for the project; the “business” need for Bruce Power to maintain supply during refurbishment does not meet the requirements of the Canadian Environmental Assessment Act to address the need for the project; this discussion should be in a broader social context and linked to a discussion of alternatives
- ✍ a clearly stated technology choice; other reactor designs can be considered as “alternative means” of carrying out the project, but the notion of a “technology neutral” environmental assessment must be completely rejected
- ✍ a thorough examination of potential for malevolent acts, including the diversion of fissile or radioactive material for illicit use, and the environmental impacts of such diversion

Based on Northwatch’s general review of the draft EIS Guidelines, we offer the following comments, based on a section-by-section review:

1. CONTEXT.
- transmission requirements should be included in the description of the project, including the brief description found in Section 1.2 of the EIS Guidelines, but more importantly in the substantive description of the project and its potential environmental impacts to be provided in the EIS itself
2. GUIDING PRINCIPLES.
- this section serves as useful background information to the review process, but these guiding principles need to be integrated into the substantive sections of the EIS Guidelines; for example, Section 2 includes a discussion of the Precautionary Approach, but the term does not appear in the document beyond that introductory discussion; the EIS should clearly outline how the proponent has taken a precautionary approach and applied the precautionary principle in the development of the project proposal and will apply that approach and principle in the project’s implementation
4. SCOPE
- the scope of the project should include the transmission of electricity from the Bruce Generating Station as this is an integral part of the project
5. ..CONTEXT
- the description of the proponent should include a description of the leasing arrangements between Bruce Power and OPG, for existing and proposed reactors and with respect to waste management, including high level waste, and decommissioning and abandonment; the description should discuss in detail the future ownership of the reactors and any related leasing arrangements
6. ENGAGEMENT AND INFORMATION DISTRIBUTION
- the level of engagement with Aboriginal communities throughout the Lake Huron watershed should be described, including the Aboriginal communities of Manitoulin Island and the North Shore of Lake Huron; similarly, stakeholder engagement should be

described for the regional study area, ie throughout the Lake Huron watershed, including the stakeholders on Manitoulin Island and the North Shore of Lake Huron
7. PROJECT JUSTIFICATION
<ul style="list-style-type: none"> - the Purpose and Need for the project must be described in terms of the public interest, rather than simply a business opportunity or the maintenance of market share - the current description of what is to be addressed in “Alternatives to the project “ is too narrow, and should not be limited to those which are within the interests of Bruce Power or within their control
- “alternatives” to the project should include a discussion of the alternative means of generating electricity or reducing electrical demand
- the EIS should clearly identify the preferred technology, ie the reactor design that has been selected by the proponent; other reactor designs should be examined as “alternative means” of carrying out the undertaking
8. PROJECT DESCRIPTION
- the EIS should clearly identify the preferred technology, ie the reactor design that has been selected by the proponent; the EA cannot be “technology neutral”
9. ENVIRONMENTAL ASSESSMENT BOUNDARIES.
- the Spatial Boundaries for the study must (rather than may) include the Lake Huron watershed, including communities in the North Channel of Lake Huron, Manitoulin Island, the North Shore of Lake Huron, Georgian Bay and the French River.
- the list of Valued Ecosystem Components. is far too limited; the VECs should include all species known to inhabit the regional study area
10. .. EXISTING ENVIRONMENT.
- the emphasis of study should not be limited to the short list of species included in the current list of VECs
11. .. EFFECTS PREDICTION, MITIGATION MEASURES AND SIGNIFICANCE OF RESIDUAL EFFECTS.
- these studies should be conducted for the regional study area, ie not limited to the local study area
12. .. ACCIDENTS AND MALFUNCTIONS
- accidents and malfunctions should include accidents and malfunctions with a broad range of probabilities, including low probability events
13. .. CUMULATIVE EFFECTS
- the discussion of cumulative effects should be done at the spatial level of the regional study area, and should include a full range of effects, including nuclear and non-nuclear activities; uranium mining, milling and refining on the North Shore of Lake Huron should be included in this evaluation of the cumulative effects

In addition to these general comments, we commend to this review the technical studies done by the Institute For Resource And Security Studies and their recommendations. These reports were commissioned by Greenpeace Canada for the purpose of this review, and were jointly steered by Northwatch, as per the directive of the Participant Funding Review Committee.

3.3.1 Review of Draft Environmental Impact Statement Guidelines for Deep Geologic Repository for Radioactive Wastes

The EIS guidelines for the environmental assessment of the Deep Geologic Repository for Radioactive Wastes should direct Ontario Power Generation to provide:

- ≡ a discussion of transport of the waste to the Bruce Generating Station; the transportation of waste to the Bruce Generating Station is part of the project, and must be addressed as such
- ≡ a full discussion of why the Intermediate Level Waste is being managed with the Low Level Waste instead of with the high level waste, and a description of how OPG made those decisions with respect to this project
- ≡ a full discussion of failure criteria, contingency planning, and the relationship between the failure criteria and decisions to implement contingency plans, including waste retrieval
- ≡ a full discussion of wastes to be generated through decommissioning and refurbishment of OPG and Bruce Power reactors
- ≡ volume estimates that include various scenarios, including re-builds, new builds, life extensions, and phaseout at various time frames

Based on Northwatch's general review of the draft EIS Guidelines, we offer the following comments, based on a section-by-section review:

1. CONTEXT.
- transportation of the wastes to the "interim facility" should be included in the description of the project, including the brief description found in Section 1.2 of the EIS Guidelines, but more importantly in the substantive description of the project and its potential environmental impacts to be provided in the EIS itself
2. GUIDING PRINCIPLES.
- this section serves as useful background information to the review process, but these guiding principles need to be integrated into the substantive sections of the EIS Guidelines; for example, Section 2 includes a discussion of the Precautionary Approach, but the term does not appear in the document beyond that introductory discussion; the EIS should clearly outline how the proponent has taken a precautionary approach and applied the precautionary principle in the development of the project proposal and will apply that approach and principle in the project's implementation
4. SCOPE
- the scope of the project should include the transportation of the wastes from their source (ie reactor stations, including Pickering, Darlington and Bruce) to the "interim" facility
5. ..CONTEXT
- the description of the proponent should clarify whether OPG or the Nuclear Waste Management Organization is the proponent; according to media reports in May 2008 the NWMO is assuming management of the DGR project, but it remains unclear who the proponent is for the project; the respective roles and responsibilities of each of the organizations should be clearly described

6. ENGAGEMENT AND INFORMATION DISTRIBUTION
- the level of engagement with Aboriginal communities throughout the Lake Huron watershed should be described, including the Aboriginal communities of Manitoulin Island and the North Shore of Lake Huron; similarly, stakeholder engagement should be described for the regional study area, ie throughout the Lake Huron watershed, including the stakeholders on Manitoulin Island and the North Shore of Lake Huron
7. PROJECT JUSTIFICATION
- the Purpose and Need for the project must be described in terms of the public interest, rather than simply a business opportunity
- the current description of what is to be addressed in “Alternatives to the project “ is too narrow, and should not be limited to those which are within the interests of OPG
- “alternatives” to the project should include a discussion of the alternative of non-centralized waste management, ie waste is managed at source, and source reduction
- reduction at source should include non-production through the reduced use of nuclear power; however, this is more appropriately dealt with as an “alternative to” rather than an “alternative means”
8. PROJECT DESCRIPTION
- the project description should include a discussion of retrieval of the wastes, and what the decision criteria or failure measures would be that would trigger a decision to retrieve the waste, and what the related contingency plans are
- the timeline for long-term performance and the performance measures should be included in the FIS
9. ENVIRONMENTAL ASSESSMENT BOUNDARIES.
- the Spatial Boundaries for the study must (rather than may) include the Lake Huron watershed, including communities in the North Channel of Lake Huron, Manitoulin Island, the North Shore of Lake Huron, Georgian Bay and the French River.
- the Temporal Boundaries for assessing project impacts must absolutely not be limited to “the period of time during which the maximum impact is predicted to occur”
- the list of Valued Ecosystem Components. is far too limited; the VECs should include all species known to inhabit the regional study area
10. .. EXISTING ENVIRONMENT.
- the emphasis of study should not be limited to the short list of species included in the current list of VECs
- the description and study of land uses and values should be done for the regional study (vs the Bruce site).
11. .. EFFECTS PREDICTION, MITIGATION MEASURES AND SIGNIFICANCE OF RESIDUAL EFFECTS.
- these studies should be conducted for the regional study area, ie not limited to the local study area
12. .. ACCIDENTS AND MALFUNCTIONS
- accidents and malfunctions should include accidents and malfunctions with a broad range of probabilities, including low probability events
13 ... LONG-TERM SAFETY OF DGR.
- the various scenarios and related models and model inputs should be clearly described

in the EIS, in a manner that members of the public can understand but that those with expertise in the area can make a technical assessment of the work done and the soundness of conclusions reached

14. .. CUMULATIVE EFFECTS

- the discussion of cumulative effects should be done at the spatial level of the regional study area, and should include a full range of effects, including nuclear and non-nuclear activities; uranium mining, milling and refining on the North Shore of Lake Huron should be included in this evaluation of the cumulative effects
--

In addition to these general comments, we commend to this review the technical studies done by RMWA Waste Management Associates and by Seismic Geophysical Ltd and their recommendations. These reports were commissioned by Greenpeace Canada for the purpose of this review, and were jointly steered by Northwatch, as per the directive of the Participant Funding Review Committee.

4.0 Closing Remarks

Thank you for the opportunity to provide comments in this first Phase of the Environmental Assessment for these two projects. As may be surmised from our remarks, we are extremely concerned with the approach being proposed to the construction of the Review Panel and many aspects of the proposed conduct of the review. We are firm supporters of environmental assessment and continue to have confidence that the Canadian Environmental Assessment Act provides sound direction for environmental assessments. However, the draft Joint Panel Review Agreement and Terms of Reference and for these two Panel Reviews do not meet the standard of review expected under the CEEA. Similarly, the draft Environmental Assessment Guidelines –as currently drafted - do not provide sufficient direction to the proponents to ensure that an appropriate examination of the proposed projects and their potential environmental impacts can be undertaken.

We trust that these comments and those of other members of the public will be given due regard, and that significantly revised Panel Review Agreements, Terms of Reference and EIS guidelines will be the result.

We look forward to future opportunities to participate in a full and fair review of these two significant projects.

Sincerely,

Original signed by:

Brennain Lloyd
Northwatch