

**MEMORANDUM OF UNDERSTANDING (MOU)
ON THE SUBSTITUTION OF THE
ENVIRONMENTAL ASSESSMENT PROCESS
FOLLOWED BY THE CANADIAN NUCLEAR SAFETY COMMISSION
FOR AN ENVIRONMENTAL ASSESSMENT BY A REVIEW PANEL
UNDER THE CANADIAN ENVIRONMENTAL ASSESSMENT ACT**

BETWEEN

THE MINISTER OF THE ENVIRONMENT

-and-

THE CANADIAN NUCLEAR SAFETY COMMISSION

PREAMBLE

WHEREAS the Minister of the Environment and the Canadian Nuclear Safety Commission (hereinafter referred to as "the Parties") have independent but related mandates in regard to the protection of the environment, and activities carried out under their respective mandates have the potential to affect the programs and responsibilities of the other;

WHEREAS the Minister of the Environment (hereinafter, "the Minister") has statutory responsibilities pursuant to the *Canadian Environmental Assessment Act* (hereinafter, "the CEAA");

WHEREAS environmental assessment provides an effective means of integrating environmental factors into planning and decision-making processes in a manner that promotes sustainable development;

WHEREAS the Canadian Nuclear Safety Commission (hereinafter, "the Commission") is a quasi-judicial administrative tribunal that is responsible, pursuant to the *Nuclear Safety and Control Act* (hereinafter, "the NSCA"), for the regulation of the development, production and use of nuclear energy and the production and use of nuclear substances, prescribed equipment and prescribed information and has regulatory responsibilities for environmental assessment pursuant to the NSCA and the CEAA;

WHEREAS the Parties acknowledge that the regulatory and environmental review process will be relied upon by the Crown to the extent possible to meet any duty it may have to consult with Aboriginal groups;

WHEREAS from time to time, application is made to the Commission to issue a licence under the NSCA for a project that the Commission, in accordance with the CEAA, would request that the Minister refer to a review panel;

WHEREAS in accordance with section 43 of the CEEA, the Minister is of the opinion that the process for assessing the environmental effects of projects that is followed by the Commission is an appropriate substitute for an assessment by a review panel;

WHEREAS the Parties recognize that a substitution applies the principle of “one project-one environmental assessment”;

AND WHEREAS the Parties wish to promote clarity and predictability and facilitate the efficient use of resources in the timely delivery of regulatory responsibilities, and avoid unnecessary duplication, while at the same time safeguarding the environment;

NOW THEREFORE, the Parties agree that the Commission’s hearing process for the regulatory review of nuclear projects is the preferred option and will, except in exceptional circumstances, substitute for assessments by review panels for such projects under the CEEA;

AND NOW THEREFORE, the Parties hereby establish principles and procedures for the substitution of the Commission’s process for assessments by review panels under the CEEA.

1. DEFINITIONS

In this MOU:

“**Aboriginal group**” means a community of Indian, Inuit or Métis people that holds or may hold Aboriginal or treaty rights under section 35 of the *Constitution Act, 1982*.

“**Agency**” means the Canadian Environmental Assessment Agency;

“**Assessment by a review panel**” has the same meaning as set out in section 2 of the CEEA;

“**CEAR**” means the Canadian Environmental Assessment Registry established under section 55 of the CEEA to facilitate public access to records relating to the environmental assessment of a project;

“**Environment**” has the same meaning as set out in section 2 of the CEEA;

“**Environmental effect**” has the same meaning as set out in section 2 of the CEEA;

“**Environmental Impact Statement**” means the document that a Proponent has prepared in accordance with the Environmental Impact Statement Guidelines issued by the Commission;

“**Federal Authority**” has the same meaning as set out in section 2 of the CEEA;

“Commission Report” means a report which sets out the rationale, conclusions and recommendations of the Commission relating to the environmental assessment of the project, including any mitigation measures and follow-up program, and a summary of any comments received from the public in the course of the Commission’s hearings, as required for a substitution by paragraph 44(c) of the CEAA;

“Licence application” means the documentation filed by the proponent under the NSCA for a licence prior to the approval of the project.

“Panel” means a panel established under section 22 of the NSCA.

“Project” has the same meaning as set out in section 2 of the CEAA;

“Proponent” has the same meaning as set out in section 2 of the CEAA;

“Responsible Authority” has the same meaning as set out in section 2 of the CEAA;

“Review” means the assessment by the Commission of the environmental effects of the Project and the consideration of the licence application under the NSCA to determine whether the Project will pose an unreasonable risk to the health and safety of persons, the environment and national security;

“Rules of Procedure” means the *Canadian Nuclear Safety Commission Rules of Procedure*;

“Substitution” means the assessment of the environmental effects of a project using the process of the Commission, instead of an assessment by a review panel under the CEAA.

2. GENERAL

Substitution of Commission Processes for CEAA Review Panels

It is acknowledged by the Parties that the Commission’s public hearing and licensing process under the NSCA and pursuant to its *Rules of Procedure* and the *Canadian Nuclear Safety Commission By-laws* meets the conditions set out in Section 44 of the CEAA and the additional conditions identified in this MOU, and is therefore, except in exceptional circumstances, an appropriate substitute for an assessment by a review panel under the CEAA and its regulations.

Application

This MOU applies when an application is made to the Commission to issue a license under the NSCA for a project that the Commission would recommend that the Minister refer to a review panel, in accordance with paragraph 20(1)(c), paragraph 21(1)(b) or section 25 of the CEAA.

Prior to initiating an environmental assessment for such a project, the Commission will inform the Minister of its intention to substitute the Commission's public hearing and licensing process for a CEAA review panel, will identify existing or potential Responsible Authorities, and indicate whether these Responsible Authorities support the request for substitution and agree with the draft scope of project to be assessed.

The Minister shall provide a written response to the President of the Commission within 30 days of receipt of the Commission's request.

Substitution shall only proceed upon receipt of a written response from the Minister of the Environment indicating his/her agreement.

Conduct of the Review

The Commission will conduct the review in a manner that discharges the requirements set out in the CEAA for substitution of the Commission's process for an assessment by a review panel.

Coordination of Responsible and Federal Authorities

The Commission will coordinate the participation of other Responsible Authorities and Federal Authorities in the environmental assessment.

Consultation with Provincial Authorities

The Commission will undertake early notification and consultations with provincial authorities that may have an interest in participating in the environmental assessment or coordinating provincial environmental assessment requirements with the Commission.

When the Commission informs the Minister of its intention to substitute the Commission's public hearing and licensing process for a CEAA review panel, it will also inform the Minister of any provincial request for the coordination of a review with a provincial assessment process or any other coordination approach.

Public Registry

The Commission will set up and maintain a public registry in a manner consistent with the requirements for the CEAR that are set out in the CEAA, any relevant regulations pursuant to the CEAA, and the Agency's policies and guidelines. The Parties will request the Canadian Environmental Assessment Agency to ensure appropriate links are provided in the CEAR to the Commission's web site and public registry.

Aboriginal Considerations

The Commission shall receive information related to the potential impacts that the project may have on potential or established Aboriginal and treaty rights, and may propose conditions to avoid or mitigate potential adverse impacts or infringements on such rights.

The Commission shall maintain a record of the information received on Aboriginal rights, and shall make this information available to the public.

Panel Composition and Appointment

The President of the Commission shall appoint as members of the Panel, including the Chairperson, persons who are unbiased and free from any conflict of interest relative to the project and who have knowledge or experience relevant to the anticipated environmental effects of the project. The President of the Commission shall fix the terms of reference of the Panel.

Elements of the Review

The Commission shall ensure that:

1. All non-prescribed information related to the Review is publicly available.
2. All stakeholders, the proponent, the public and Aboriginal groups have the opportunity to provide written comments on the Panel's terms of reference and Environmental Impact Statement Guidelines.
3. The proponent is to provide:
 - a. A description of the environmental and socio-economic setting;
 - b. An effects assessment that considers, among other things, the factors required to be considered under subsections 16(1) & (2) of the CEEA; and
 - c. Inspection, monitoring and follow-up provisions.
4. All stakeholders, the public and Aboriginal groups will have an opportunity to review and comment on the environmental assessment documentation submitted by the proponent.
5. The Panel will schedule and announce the start of hearings once it is satisfied that the proponent's Environmental Impact Statement and any additional information has adequately responded to the Environmental Impact Statement Guidelines.
6. The public and Aboriginal groups have an opportunity to appear before the Panel at public hearings.
7. On completion of the assessment, the Panel will convey a report in both official languages to the Minister of the Environment who will then publish the report.
8. The report shall set out the Panel's rationale, findings, conclusions and recommendations, including recommendations related to any mitigation measures and follow-up programs that should be implemented with respect to the project, and a summary of the comments received from the public and Aboriginal peoples.

3. PARTICIPANT FUNDING

Participant funding for the Review will be provided and administered by the Commission.

4. PROBLEM RESOLUTION

The Parties are committed to resolving any differences of opinion in the interpretation or application of this MOU in a timely manner. Efforts to resolve differences will take place at the working level wherever practicable.

5. EXISTING RIGHTS AND OBLIGATIONS

Nothing in this MOU shall be deemed to diminish the obligations and rights of the Parties.

6. ENTRY INTO FORCE, AMENDMENT, TERMINATION

This MOU shall enter into force upon signature by the Parties.

This MOU may be amended at any time by agreement of the Parties in writing.

Either Party may terminate this MOU upon one year's written notice to the other Party, in which case any annexes will also terminate.

7. EVALUATION

The Parties will evaluate the effectiveness of this MOU three years after it comes into force.

Signed:



Minister of the Environment



President,
Canadian Nuclear Safety Commission

MAR 01 2011

Date

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Date