



Canadian Nuclear
Safety Commission

Commission canadienne
de sûreté nucléaire

Record of Proceedings, Including Reasons for Decision

In the Matter of

Applicant Canadian Nuclear Safety Commission

Subject Licence Amendment to Class II Licences –
Radiation Safety Officer Approval

Hearing
Date October 26, 2009

RECORD OF PROCEEDINGS

Motion by: Canadian Nuclear Safety Commission

Address/Location: 280 Slater St., Ottawa, Ontario, K1P 5S9

Purpose: Licence Amendment to Class II Licences – Radiation Safety Officer Approval

Application received: N/A

Date of hearing: October 26, 2009

Location: Canadian Nuclear Safety Commission (CNSC) 280 Slater St., Ottawa, Ontario

Members present: M. Binder, Chair

Secretary: K. McGee

Recording Secretary: S. Dimitrijevic

Licences: Amended

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Introduction

1. The Canadian Nuclear Safety Commission¹ (CNSC) initiated a procedure to introduce a licence condition that would require all licensees with Class II Nuclear Facility and Prescribed Equipment (C2NFPE) licences to designate a CNSC approved Radiation Safety Officer (RSO). At its February 19, 2009 meeting, the Commission approved an amendment to the document entitled *Class II Nuclear Facilities and Prescribed Equipment Regulations*, requiring certified RSOs for all Class II licences. Such an amendment would give regulatory authority to the approval process for prospective RSOs, to ensure that they are adequately qualified. The proposed regulatory amendment has been published for public comment, in *Canada Gazette Part I* on June 6, 2009.
2. At the same meeting, the Commission also decided to consider acting on its own motion to impose a licence condition, having the same effect, to all existing Class II licences, as an interim measure until the *Class II Nuclear Facilities and Prescribed Equipment Regulations* is amended. This action would fill the regulatory gap until the proposed regulatory amendment requiring the certification of Class II RSOs becomes law. This would also ensure that CNSC authorized RSOs are employed by all Class II licensees.

Issue

3. In considering the matter, the Commission was required to decide, pursuant to section 25 of the *Nuclear Safety and Control Act*² (NSCA) and in accordance with subsection 8 (2) (h) of the *General Nuclear Safety and Control Regulations*³ (GNSCR), if a failure to do so could pose an unreasonable risk to the environment, the health and safety of persons or national security.

Hearing

4. In accordance with s. 25 of the NSCA, the Commission may amend a licence on its own motion, subject to an obligation to provide an opportunity to be heard. The Commission provided this opportunity to be heard, through written submissions, to all Class II licensees and through a Public Notice published on July 7, 2009. A Panel of the Commission (hereafter referred to as the Commission) held a hearing on October 26, 2009 in Ottawa, Ontario where it considered the written submissions of CNSC staff (CMDs 09-H109 and 09-H109.A) and written submissions from two affected licensees (CMD 09-H109.1 and CMD 09-H109.2).

¹ The *Canadian Nuclear Safety Commission* is referred to as the “CNSC” when referring to the organization and its staff in general, and as the “Commission” when referring to the tribunal component.

² S.C. 1997, c. 9.

³ S.O.R./2000-202

Decision

5. Based on its consideration of the matter, as described in more detail in the following sections of this *Record of Proceedings*, the Commission concludes that the conditions of subsection 8 (2) (h) of the GNSCR have been met. Therefore,

the Commission, pursuant to section 25 of the *Nuclear Safety and Control Act*, amends the Class II Nuclear Facility and Prescribed Equipment licences issued to the licensees listed in the Attachment A of CMD 09-H109, for their facilities located in Canada. Each amended licence remains valid until its date of expiry.

6. The Commission includes in the licences the conditions as recommended by CNSC staff in CMD 09-H109. The complete list of Class II licences to be amended is set out in Attachment A to CMD 09-H109.A. The new condition, requiring that all licensees employ a CNSC certified RSO, will cease to operate when the proposed amendment to the *Class II Nuclear Facilities and Prescribed Equipment Regulations* respecting an RSO certification process is made and published in *Canada Gazette Part II*.

Issues and Commission Findings

7. CNSC staff requested that Commission exercise its authority and amend all existing C2NFPE licences by adding a new licence condition that would require all licensees to employ a CNSC certified RSO. In its submissions, CNSC staff presented the proposed new licence condition and a list of the affected licensees.
8. Authority to amend licences on its own motion is given to the Commission in section 25 of the NSCA and subsection 8(2)(h) of the *General Nuclear Safety and Control Regulations*. In these circumstances, the *Canadian Nuclear Safety Commission Rules of Procedure*⁴ permits all affected licensees to have an opportunity to be heard on the Commission's proposed amendment.
9. The Commission provided the opportunity to be heard by writing to each of the Class II licensees detailing the proposed licence amendment and inviting written submissions to the Commission by August 7, 2009. A Notice was also published on July 7, 2009 providing all Class II Nuclear Facility and Prescribed Equipment licensees and other interested parties with an opportunity to be heard on its intent to amend the C2NFPE licences by adding a new licence condition.
10. Submissions were received from the St. Joseph's Healthcare Hamilton and Hamilton Health Sciences (CMD 09-H109.1) and Ontario Power Generation Inc. (CMD 09-H109.2). Both licensees supported the Commission's motion to amend the C2NFPEs and expressed no concerns about the content of the proposed amendment.

⁴ S.O.R./2000-211

11. Before making a licensing decision, the Commission must be satisfied that all applicable requirements of the *Canadian Environmental Assessment Act*⁵ (CEAA) have been fulfilled. In this respect, the Commission concludes that the proposed amendment does not amount to a 'project' under the CEAA, and that there was no requirement for an EA pursuant to subsection 5(1) of the CEAA. Therefore, the Commission is satisfied that all applicable requirements of the CEAA have been fulfilled.



Michael Binder
President,
Canadian Nuclear Safety Commission

OCT 26 2009

Date

⁵ S.C. 1992, c. 37.