



# Record of Decision

DEC 24-H103

In the Matter of

Applicant BWXT Nuclear Energy Canada Inc.

Subject Application for Acceptance of the Revised  
Financial Guarantees Proposed by BWXT  
Nuclear Energy Canada Inc. for its Toronto  
and Peterborough Facilities

Date of  
Decision April 8, 2024

**RECORD OF DECISION – DEC 24-H103**

Applicant: BWXT Nuclear Energy Canada Inc.

Address/Location: 1160 Monaghan Road  
Peterborough, Ontario  
K9J 7B5

Purpose: Application for acceptance of the revised financial guarantees proposed by BWXT Nuclear Energy Canada Inc. for its Toronto and Peterborough facilities

Application received: November 25, 2022

Hearing: Public Hearing in Writing – Revised Notice of Hearing in Writing published on January 3, 2024

Date of decision: April 8, 2024

Panel of Commission: Dr. Timothy Berube, Presiding Member

**Revised Financial Guarantees: Accepted**

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## 1.0 INTRODUCTION

1. On November 13, 2023, BWXT Nuclear Energy Canada Inc. (BWXT) submitted a request with the Canadian Nuclear Safety Commission (CNSC)<sup>1</sup> for the acceptance of its revised financial guarantees for the future decommissioning of its Toronto and Peterborough facilities. BWXT operates two Class IB nuclear fuel fabrication facilities and supplies fuel bundles for CANDU nuclear power reactors. BWXT's Toronto facility has pelleting operations where it produces natural and depleted uranium dioxide (UO<sub>2</sub>) pellets. BWXT's Toronto facility is located on the traditional territory of many nations, including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee and the Wendat peoples, and now home to many diverse First Nations, Inuit and Métis peoples. BWXT's Peterborough facility uses the UO<sub>2</sub> pellets and in-house manufactured zircalloy tubes to assemble fuel bundles, and carries out nuclear design and contaminated equipment repair services. BWXT's Peterborough facility is located on the Treaty 20 Michi Saagiig territory and in the traditional territory of the Michi Saagiig and Chippewa Nations, collectively known as the Williams Treaties First Nations, which include: Curve Lake, Hiawatha, Alderville, Scugog Island, Rama, Beausoleil, and Georgina Island First Nations.
2. BWXT currently maintains financial guarantees of approximately \$48.1 million to cover the decommissioning costs for both its Toronto and Peterborough facilities. The financial guarantees, in the form of an irrevocable letter of credit and a surety bond for each facility, were accepted by the Commission at the time of BWXT's [licence renewal in 2020](#).<sup>2</sup> BWXT's current licences, FFL-3621.00/2030 (Toronto) and FFL-3620.00/2030 (Peterborough), are valid until December 31, 2030.
3. In December 2022, BWXT submitted revised preliminary decommissioning plans (PDPs) for its Toronto and Peterborough facilities to the CNSC, in accordance with licence condition 11.2 of its licences. The revision to the PDPs resulted in updated financial guarantee cost estimates. BWXT is now seeking the Commission's acceptance of revised financial guarantees totalling \$30,498,884, in the form of irrevocable letters of credit and surety bonds for each facility.

### Issue

4. The Commission is considering whether to accept BWXT's proposed financial guarantees in the amount of \$30,498,884, in the form of an irrevocable letter of credit and a surety bond for both its Toronto and Peterborough facilities.
5. Under subsection 24(5) of the [Nuclear Safety and Control Act](#)<sup>3</sup> (NSCA):

*A licence may contain any term or condition that the Commission considers necessary for the purposes of this Act, including a condition that the applicant provide a financial guarantee in a form that is acceptable to the Commission.*

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<sup>1</sup> 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.

<sup>2</sup> Record of Decision DEC 20-H2, *In the Matter of BWXT Nuclear Energy Canada Inc. Application for the Renewal of the Fuel Facility Licence for BWXT's Toronto and Peterborough Facilities*, December 18, 2020.

<sup>3</sup> S.C. 1997, c. 9.

6. Licence condition G.3 of FFL-3621.00/2030 and FFL-3620.00/2030 requires that:

*The licensee shall maintain a financial guarantee for decommissioning that is acceptable to the Commission.*

Licence condition 11.2 of FFL-3621.00/2030 and FFL-3620.00/2030 requires that:

*The licensee shall maintain a preliminary decommissioning plan.*

7. As an agent of the Crown, the Commission recognizes its role in fulfilling the Crown's constitutional obligations, along with advancing reconciliation with Canada's Indigenous peoples. The Commission's responsibilities include the duty to consult and, where appropriate, accommodate Indigenous interests where the Crown contemplates conduct which may adversely impact potential or established Aboriginal<sup>4</sup> or treaty rights.<sup>5</sup> As such, the Commission must determine what engagement and consultation steps and accommodation measures are called for respecting Indigenous interests.

#### Panel

8. Pursuant to section 22 of the NSCA, the Acting President established a panel of the Commission consisting of himself to consider the application. A [notice of hearing in writing](#) was published on December 8, 2023,<sup>6</sup> and a [revised notice](#) was published on January 3, 2024.<sup>7</sup> The Commission, in conducting a public hearing based on written materials, considered written submissions from BWXT ([CMD 24-H103.1](#) and [CMD 24-H103.1A](#)) and CNSC staff ([CMD 24-H103](#)). The Commission also considered written submissions from 3 intervenors (see Appendix A).

#### Request for Confidentiality

9. Following a request by BWXT under rule 12 of the [Canadian Nuclear Safety Commission Rules of Procedure](#)<sup>8</sup>, the Commission [decided](#)<sup>9</sup> that certain information, including PDPs, surety bond forms and letters of credit, filed by BWXT in respect of this hearing would remain confidential. BWXT's updated summary documents were filed as CMD 24-H103.1.

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<sup>4</sup> "Aboriginal" is the term used in this document when referring to the Crown's duty to consult as that is the term used in s. 35 of the *Constitution Act, 1982*. In all other cases, "Indigenous" is the preferred terminology and used accordingly.

<sup>5</sup> *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73; *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74.

<sup>6</sup> Notice of Hearing in Writing, Ref. 2024-H-103, December 8, 2023.

<sup>7</sup> Revised Notice of Hearing in Writing, Ref. 2024-H-103, Revision 1, January 3, 2024.

<sup>8</sup> SOR/2000-211.

<sup>9</sup> *Commission Ruling on Request to Protect Confidential Information*, CMD 24-H103, February 14, 2024.

## 2.0 DECISION

10. Based on its consideration of this matter, as described in more detail in the following sections of this Record of Decision, the Commission is satisfied that:
- The amounts of BWXT's revised financial guarantees are sufficient for the purpose of the future decommissioning of the Toronto and Peterborough facilities
  - The financial instruments for the revised financial guarantees, in the form of irrevocable letters of credit and surety bonds, are appropriate

Therefore,

the Commission accepts the revised financial guarantees proposed by BWXT Nuclear Energy Canada Inc. for its Class IB nuclear fuel fabrication facilities located in the municipalities of Toronto and Peterborough, Ontario.

11. With this decision, the Commission accepts the financial guarantees totalling \$30,498,884, in the form of irrevocable letters of credit and surety bonds, as follows:
- For the Toronto facility, a letter of credit of \$1,309,094 and a surety bond in the amount of \$19,120,095.
  - For the Peterborough facility, a letter of credit of \$516,904 and a surety bond of \$9,552,791.
12. The Commission directs BWXT to provide to CNSC the original financial instruments no later than June 30, 2024.

## 3.0 ISSUES AND COMMISSION FINDINGS

13. The Commission requires BWXT to have operational plans for the decommissioning and long-term management of waste produced during the lifespan of its Toronto and Peterborough facilities. To ensure that adequate resources are available for the safe and secure future decommissioning of BWXT's Toronto and Peterborough facilities, the Commission requires that adequate financial guarantees for realization of the planned activities be in place and maintained in a form acceptable to the Commission throughout the licence period.
14. In considering the acceptability of BWXT's proposed revised financial guarantees, the Commission considered whether the proposed financial guarantees met the criteria set out in CNSC [REGDOC-2.11.2, \*Decommissioning\*](#),<sup>10</sup> [REGDOC-3.3.1 \*Financial Guarantees for the Decommissioning of Nuclear Facilities and Termination of Licensed Activities\*](#)<sup>11</sup> and [CSA N294:19, \*Decommissioning of Facilities Containing Nuclear Substances\*](#),<sup>12</sup> and whether BWXT would satisfy the applicable licence conditions for its facilities.

<sup>10</sup> [REGDOC-2.11.2, \*Decommissioning\*](#), January 2021

<sup>11</sup> [REGDOC-3.3.1 \*Financial Guarantees for the Decommissioning of Nuclear Facilities and Termination of Licensed Activities\*](#), January 2021

<sup>12</sup> N294:19, *Decommissioning of Facilities Containing Nuclear Substances*, CSA Group, 2019

### 3.1 Preliminary Decommissioning Plans and Cost Estimates

15. BWXT submitted information on its revised PDPs and cost estimates. BWXT submitted updated PDPs to the CNSC in November 2022, in accordance with the required 5-year review under licence condition 11.2 of its licences. BWXT submitted that its revised PDPs were in accordance with REGDOC-2.11.2 and the requirements set out in CSA N294:19.
16. As described in CMD 24-H103.1A, BWXT submitted that the end-state objective of its decommissioning strategy for each facility was the unrestricted release of the entire licensed property from regulatory control. BWXT noted that its preferred decommissioning strategy involved the removal of all contaminated equipment and hazardous materials for disposal, and remediating the sites and structures of contamination.
17. BWXT explained that its cost estimate included all labour, material, equipment, site operating expenses, CNSC regulatory fees, waste packaging, transportation and disposal costs required to decommission each facility to the end-state objective of unrestricted release for either reuse or demolition. Based on the revised PDPs, BWXT estimated the cost for decommissioning to be \$20,429,189 for the Toronto facility, and \$10,069,695 for the Peterborough facility.<sup>13</sup> BWXT noted that the total cost estimate for decommissioning was a decrease of about \$17.5 million from its current financial guarantees.
18. In CMD 24-H103, CNSC staff submitted information on its assessment of BWXT's revised PDPs and associated cost estimates for the future decommissioning of BWXT's facilities. CNSC staff reported that BWXT's revised PDPs provided an acceptable strategy and credible cost estimate, and were consistent with REGDOC-2.11.2 and CSA N294:19. CNSC staff noted that BWXT's decommissioning strategy was unchanged from its previous PDPs, and did not require any period of institutional control.
19. In section 2.2 of CMD 24-H103, CNSC staff reported that the decrease in the decommissioning cost estimate for the Toronto facility was primarily due to a change in the containers to be used to transport waste, and the selection of US Ecology, rather than Canadian Nuclear Laboratories Inc., as the waste disposal site. For the Peterborough facility, CNSC staff reported that the decrease in the cost estimate was a result of maximizing the use of US Ecology disposal site, reducing labour required to prepare packages by changing waste containers, eliminating cleaning of some unaffected areas and a reduction in administrative costs.
20. The three interventions commented on the cost estimates. J. Scott ([CMD 24-H103.3](#)) expressed concerns regarding the reduction in the cost estimate despite economic inflation. P. Harris ([CMD 24-H103.5](#), [CMD 24-H103.5A](#)) expressed concerns regarding BWXT's public information program in relation to the application and on the availability of information regarding the Peterborough preliminary decommissioning plan. P. Harris noted issues that were discussed as part of the 2020 licence renewal hearing, including on the state of the Peterborough General Electric industrial site. The intervenor expressed the view that the future decommissioning of the BWXT facility in Peterborough could encounter legacy contamination, including from dust suppressants and beryllium.

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<sup>13</sup> BWXT's cost estimates are in 2027 Canadian dollars, to account for inflation.

The Nuclear Transparency Project ([CMD 24-H103.4](#)) also expressed concerns on the availability of information regarding PDPs.

### 3.2 Financial Guarantees

21. BWXT currently maintains financial guarantees totalling approximately \$48.1 million, in the form of irrevocable letters of credit and surety bonds. For its revised financial guarantee for the Toronto facility, BWXT proposed a letter of credit of \$1,309,094 and a surety bond in the amount of \$19,120,095. For the Peterborough facility, BWXT proposed a letter of credit of \$516,904 and a surety bond of \$9,552,791.
22. In section 2.3 of CMD 24-H103, CNSC staff provided the Commission with information on its assessment of BWXT's proposed revised financial guarantee amounts and instruments. CNSC staff submitted that BWXT's proposed total financial guarantee amount of \$30,498,884 is adequate for the future decommissioning of its Toronto and Peterborough facilities. CNSC staff informed the Commission that the proposed financial instruments, a combination of surety bond and letter of credit for each facility, are the same arrangement as those currently in place. CNSC staff also found that the proposed financial instruments satisfy the criteria of liquidity, certainty of value, adequacy of value, and continuity set out in REGDOC-3.3.1.

### 3.3 Indigenous Engagement and Consultation

23. The common law duty to consult is grounded in the key principle of the honour of the Crown. The duty is engaged when the Crown contemplates conduct that may adversely affect established or potential Aboriginal and/or treaty rights of which the Crown has real or constructive knowledge.<sup>14</sup> The Commission acknowledges its obligation to fulfill the duty to consult and ensure that it considers impacts to Aboriginal and/or treaty rights, pursuant to section 35 of the [Constitution Act, 1982](#)<sup>15</sup> in the matter before it. Furthermore, the CNSC, as an agent of the Crown and as Canada's nuclear regulator, recognizes and understands the importance of building relationships and engaging with Canada's Indigenous Nations and communities.
24. In section 3 of CMD 24-H103, CNSC staff submitted that the request for acceptance of the revised financial guarantee is not expected to cause any new adverse impacts to potential or established Indigenous and/or Treaty rights.
25. The Commission concludes that the proposed revision to the financial guarantee does not include any new licensed activities that could cause new impacts on the environment or changes in the ongoing licensed activities at the BWXT facilities, and therefore, will not cause any new adverse impacts to any potential or established Indigenous and/or treaty rights.<sup>16</sup> As such, the Commission's responsibility to uphold the honour of the Crown and its constitutional obligations with regard to engagement and the duty to consult respecting Indigenous interests have been satisfied.

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<sup>14</sup> *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, at para 35.

<sup>15</sup> Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

<sup>16</sup> *Rio Tinto Alcan v. Carrier Sekani Tribal Council*, 2010 SCC 43, at paras 45 and 49.




### 3.4 Commission Findings

26. Following the Commission's analysis of the evidence submitted on the record for this hearing, the Commission concludes that BWXT's proposed financial guarantee instruments and revised financial guarantee amounts are acceptable. The Commission notes that BWXT's proposed financial guarantee instruments are, apart from the amounts, unchanged from the existing financial guarantees. The Commission is satisfied that BWXT's revised PDPs provide the basis for credible cost estimates for the future decommissioning of BWXT's Toronto and Peterborough facilities. The Commission comes to these conclusions on the basis that:
- BWXT's revised PDPs meet the requirements of REGDOC-2.11.2 and CSA N294-19
  - the decrease in the cost estimates for BWXT's proposed financial guarantees, as a result of planned changes to equipment (containers) and the disposal sites used, is justified
  - the proposed financial instruments, in the form of letters of credit and surety bonds, satisfy the criteria of liquidity, certainty of value, adequacy of value, and continuity set out in REGDOC-3.3.1
27. The Commission is also satisfied that BWXT continues to meet its licensing requirements related to maintaining a financial guarantee. The Commission expects to be informed should there be an impact on decommissioning cost estimates due to a future revision to the PDPs.
28. The Commission acknowledges the importance of transparency and encourages BWXT and CNSC staff to continue to make relevant information available to the public, as appropriate. The Commission recognizes BWXT's efforts to respond to intervenors and encourages BWXT to continue to provide information to interested parties.
29. The Commission notes that, as described in REGDOC-2.11.2, a PDP is used for planning and cost estimation purposes and is to be progressively updated over the lifetime of a facility. Prior to the decommissioning stage, a detailed decommissioning plan (DDP) is to be developed. If and when a licensee intends to decommission a facility, the licensee is required to apply for a licence to decommission and submit a DDP. Detailed decommissioning plans must contain a summary report of any public and Indigenous engagement undertaken in its preparation. The Commission would consider an application for a licence to decommission a facility in a public hearing, with the possibility for interventions.

#### 4.0 CONCLUSION

30. The Commission concludes that BWXT's revised PDPs provide credible cost estimates for the future decommissioning of its Toronto and Peterborough facilities, and that the financial guarantee instruments consisting of a combination of letters of credit and surety bonds are acceptable. Therefore, the Commission accepts BWXT's proposed revised financial guarantees for its Toronto and Peterborough facilities in the amount of \$30,498,884.

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April 8, 2024

Dr. Timothy Berube  
Presiding Member  
Canadian Nuclear Safety Commission

Date

## Appendix A – Intervenors

Intervenor	Document Number
Jane Scott	24-H103.3
Nuclear Transparency Project	24-H103.4
Peter Harris	24-H103.5 24-H103.5A