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Letter from Paul Daly

Lettre de Paul Daly

In the Matter of the

À l'égard de

Darlington New Nuclear Project

Projet de nouvelle centrale nucléaire de Darlington

Application to renew the nuclear power reactor site preparation licence for the Darlington New Nuclear Project

Demande de renouvellement du permis de préparation de l'emplacement d'une centrale nucléaire pour le projet de nouvelle centrale nucléaire de Darlington

Commission Public Hearing

Audience publique de la Commission

June 10-11, 2021

10-11 juin 2021

Paul Daly
University Research Chair in Administrative Law & Governance, University of Ottawa

Lisa Thiele

Senior General Counsel

Canadian Nuclear Safety Commission

21 April 2021

Dear Ms. Thiele:

The Canadian Nuclear Safety Commission is due to hold a public hearing in June 2021 on Ontario Power Generation's application for the renewal of its site-preparation licence for a new nuclear facility at its site at Darlington, Ontario. This licence was originally granted in 2012 for a 10-year term subsequent to an environmental assessment process. The focus of the renewal application is on the continued suitability of the Darlington site.

I have carefully considered the facts of President Rumina Velshi's prior involvement with OPG and, in particular, the Darlington site. Applying general principles of administrative law relating to impartiality and specific factors drawn from analogous cases, my conclusion is that there is no reason for President Velshi to recuse herself from the upcoming hearing and Commission decisions on OPG's application.

Three general principles of administrative law relating to impartiality support this conclusion: (1) the presumption that decision-makers like President Velshi are impartial; (2) the general policy of appointing industry experts like President Velshi to administrative boards, commissions and tribunals; and (3) the nature of the Commission's decision-making process, where evidence is led by Commission Staff and the licensee in public hearings, and the role of the Commissioners is to apply statutory law, regulatory provisions and soft law to the facts introduced in evidence.

Three specific factors drawn from analogous cases further support this conclusion: (1) the length of time since the decision-maker's prior involvement; (2) the nature of the prior involvement; and (3) the similarity between the matter previously considered and the matter currently being considered. Here, almost 12 years will have passed between President Velshi's work at OPG and the upcoming hearing; President Velshi's prior involvement did not relate to high-level policy decisions or to the technical detail of the proposed new operations on the Darlington site; and President Velshi's prior involvement concerned preliminary project management and reactor technology selection rather than the details of the environmental assessment or site-preparation licence application.

Given these general principles and specific factors, there can be no reasonable apprehension that President Velshi will be pre-disposed to decide in OPG's favour and there is thus no need for President Velshi to recuse herself.



Paul Daly