Canadian Nuclear Safety Commission | Commission canadienne de sûreté nucléaire

CMD 22-M33.9

Date: 2022-10-04
File / dossier : 6.02.04
Edocs pdf : 6884106

Written submission from the Nuclear Transparency Project

Mémoire du Nuclear Transparency Project

Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021

Rapport de surveillance réglementaire pour les sites des Laboratoires Nucléaires Canadiens : 2021

Commission Meeting

Réunion de la Commission

November 2, 2022

Le 2 novembre 2022

Canada

nuclear transparency project

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Submitted via email

October 4, 2022

To President Velshi and Members of the Canadian Nuclear Safety Commission,

Re: Canadian Nuclear Safety Commission Staff's Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021

We would like to begin by thanking the Commission for this opportunity to provide comments on this Regulatory Oversight Report (ROR). We would also like to recognize the efforts of Canadian Nuclear Safety Commission (CNSC) staff, multiple Canadian civil society organizations, and Indigenous Nations for their informative publicly available materials and submissions on this matter.

About NTP

The Nuclear Transparency Project (NTP) is a Canadian-registered not-for-profit organization dedicated to supporting open, informed, and equitable public discourse on nuclear technologies. NTP advocates for robust public access to data and other types of information and helps to produce accessible analysis of publicly available information, all with a view to supporting greater transparency in the Canadian nuclear sector.

NTP is comprised of a multi-disciplinary group of experts working to examine the economic, ecological, and social facets and impacts of the Canadian nuclear sector. The organization produces public reports, academic articles, and other publicly accessible resources. It also regularly intervenes in nuclear regulatory decision-making processes. The organization seeks to support youth and early career scholars, especially those from underrepresented communities in their respective disciplines. NTP also recognizes a responsibility to model the transparency and accountability practices for which it advocates. We are committed to interdisciplinary, cross-sectoral, and equitable collaborations and dialogue between regulators, industry, civil society, members of host and potential host communities, as well as academics and professionals from science, technology, engineering and math (STEM) fields, the social sciences, and humanities.

About this intervention

NTP's intervention was made possible by CNSC funding through its Participant Funding Program (PFP). These submissions were drafted by NTP founder and coordinator Pippa Feinstein, JD LLM in collaboration with hydrogeologist Ekaterina Markelova, PhD and Alan Rial, M. Eng. who performed NTP's data analysis.

Our submissions have been divided into three parts: the first part contains a review of the current ROR; the second part contains more general findings and recommendations relating to publicly accessible data on which this ROR relies as part of its evidentiary basis; and a third part which contains recommendations to improve the ROR intervention process for future ROR meeting proceedings.

PART ONE: NTP's review of the ROR

Generally, the ROR is written in an accessible way with helpful use of hyperlinks. It also includes additional graphics which are appreciated (especially the diagrams of the geographical locations of CNL facilities[1]). However, NTP has some broader comments relating to the scope of this ROR including the rationale for having a CNL-specific ROR, and the choice to remove several facilities from this year's ROR due to them being the subject of ongoing relicensing hearings.

NTP is curious about the scoping of this ROR – and in particular, why CNL has its own ROR. All other RORs are defined by regulated activity, for example: nuclear energy generation, uranium processing, or mining and milling. The CNL ROR is the only ROR to be defined by the licensee rather than the regulated activity. Further, there are other licensees that operate numerous diverse nuclear facilities but have not been afforded their own RORs, including Cameco and Ontario Power Generation (OPG). Why is CNL approached differently? Most of CNL's activities relate to decommissioning and waste management, however, several other licensees also have significant responsibilities relating to decommissioning, site remediation, and waste management. As such, a ROR relating to waste and decommissioning (that is not just CNL-specific), might be a more consistent approach to scoping RORs.

Recommendation 1: that CNSC staff consider whether CNL should have its own ROR, or whether there should rather be a nuclear waste and decommissioning ROR that includes but is not limited to CNL facilities and initiatives.

NTP is also concerned that the Port Hope Area Initiative (PHAI) has been excluded from this year's ROR. NTP understands RORs are meant to provide CNSC Commissioners and members of the public an overall sense of the quality of licensee operations and their regulatory compliance. As such, NTP believes that if facilities are subject to other

[1] Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2021, CMD 22-M33, 21 July 2022, online: https://www.nuclearsafety.gc.ca/eng/the-commission/meetings/cmd/pdf/CMD22/CMD22-M33.pdf at p 5.

regulatory hearing processes at the same time an ROR is being drafted, this should be noted in a given year's ROR, but not constitute grounds for that facility to be exempted from being included in the ROR. For consistency, if a facility is operating in a given calendar year, the state of its operations and regulatory compliance should be summarized in each year's ROR. This has important practical benefits: regular ROR reporting allows Commissioners and members of the public to compare facilities' performance from year to year and identify possible trends in a facility's performance over time. Consistent reporting of all facilities in each ROR also allows comparisons between these facilities and their respective performances. Exempting facilities from inclusion in RORs frustrate these kinds of comparison. Further, intervenors at relicensing hearings do not necessarily overlap with intervenors at ROR meetings. As such, information disclosed about a facility in a relicensing hearing may not be easily accessible to an intervenor in an ROR proceeding: the overlap may be experienced by CNSC staff, even CNSC Commissioners, but not members of the public. As such, there are public transparency concerns with facilities being exempted from RORs (even when undergoing Commission reviews elsewhere).

Recommendation 2: that facilities should be consistently included in RORs, regardless of whether they are subject to regulatory reviews elsewhere.

Finally, the ROR includes references to environmental data accessible via hyperlink to the Open Government Portal and the Independent Environmental Monitoring Program (IEMP). Public access to data is a cornerstone of transparency, and environmental data is an important piece of this. While NTP applauds CNSC staff's recognition of environmental data in its ROR, more publicly-accessible data is still required to support CNSC staff's assertions that facilities' environmental programs are sufficient. NTP's more detailed analysis of this data and accompanying recommendations for improvement can be found in part two of this submission below.

PART TWO: NTP's review of publicly accessible data for CNL facilities

NTP experts reviewed the CNSC website, all CNL's websites for its respective facilities and projects covered by this ROR, the Open Government Portal radionuclide release data for CNL sites, and the IEMP webpages. NTP's experts assessed the type, frequency, and quality of data disclosed on all these platforms and began to identify potential data gaps and inconsistencies.

NTP is still in the process of consulting with CNSC staff about the radionuclide release data currently posted to the Open Government Portal. In order to avoid any potential misrepresentations of this data, we will not provide full summaries of preliminary queries and findings at this time. That being said, NTP notes that CNL datasets are the poorest quality of all datasets available on the open data portal for radionuclide releases. CNL facilities' reported data is often incomplete, sometimes with whole years of data for certain contaminants missing without explanation. NTP will provide a more detailed review and analysis of CNL open data in due course, but in the meantime wants to stress that publicly

available data is not sufficient to support CNSC staff assertions of CNL's environmental responsibility.

In addition, NTP has identified certain data gaps in available online records. The organization recommends the addition of groundwater and stormwater data from CNL sites be added to the Open Government Portal.

Recommendation 3: that groundwater and stormwater data for all CNL facilities be disclosed via the Open Government Portal

Finally, specific baselines, relevant Derived Release Limits, and Action Levels should be posted in separate columns in data reported on the Open Government Portal. This allows for a better contextualized reading of reported data by members of the public and public interest organizations.

Recommendation 4: specific baselines, relevant Derived Release Limits, and Action Levels should be posted in separate columns in data reported on the Open Government Portal.

PART THREE: NTP's recommendations for future ROR intervention processes

Intervention timelines are very short and do not allow sufficient time for intervenors to request and obtain information from CNSC staff and licensees. Currently, PFP applications are due in the Spring, decisions are made late summer, and interventions are due in early Autumn. This effectively means members of the public and public interest organizations must undertake their work with little notice over the summer holidays and busy back-to-school season. This can pose a barrier for intervenors with family care responsibilities, those who work in schools and universities, and others. Funding decisions are usually determined before RORs are publicly released. As such, they are not dependent on ROR publication timelines and should be scheduled earlier in the year (with little inconvenience to the Commission) in order to allow organizations to better plan for their work and ensure CNSC staff and licensees have more time to respond to intervenors' information requests.

Recommendation 5: that the CNSC increase the amount of time intervenors have to prepare their written submissions.

The Commission should reinstitute opportunities for intervenors to present their interventions, ask and answer questions before the Commission on the record during meeting proceedings. This opportunity can be extended for virtual attendance only and thus not require the CNSC to cover any travel costs associated with in-person attendance. With relicensing hearings on a 10-year basis or more for most facilities, Commission meetings are a particularly important avenue for the public to engage with Commissioners.

Recommendation 6: that the CNSC Registry and Commissioners allow intervenors to virtually attend and present at future ROR meetings.

More transparency is required around the criteria being used to determine who receives funding, how much each intervenor receives, and what kinds of analysis are ultimately funded over others. Funding is a key factor that determines who can intervene, and by extension, which questions and issues are ultimately brought to the Commission. The way "value added" contributions and "expertise" are defined effectively works to scope (in part) the content that can be addressed during Commission meetings. While general guidance is provided to interested members of the public and public interest organizations in the CNSC's Participant Funding Program Guide[2] and eligibility criteria[3], both these materials are silent on the intersection between funding and the substantive scope of Commission proceedings. NTP encourages the development of more specific funding criteria, in consultation with members of the public and public interest organizations.

Recommendation 7: that the CNSC's PFP develop more specific intervenor funding criteria, in consultation with members of the public and public interest organizations.

[2] CNSC, "Participant Funding Guide", online: http://www.nuclearsafety.gc.ca/eng/pdfs/participant-funding-program/CNSC-Participant-Funding-Guide-eng.pdf.
[3] CNSC, "Eligibility Criteria", online: http://www.nuclearsafety.gc.ca/eng/the-commission/participant-funding-program/eligibility-criteria.cfm.