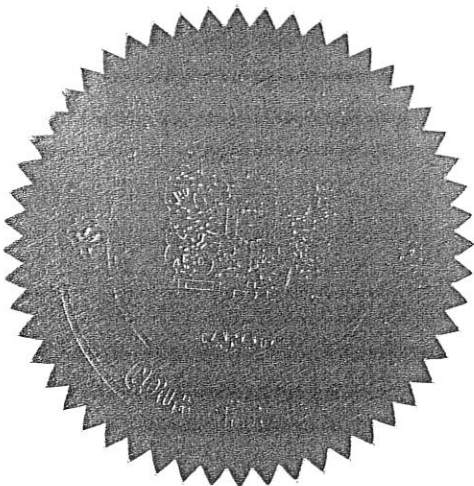


Court File No. T-9 46-15



FEDERAL COURT

SAVE OUR SAUGEEN SHORES, INC.

Applicant

and

ATTORNEY GENERAL OF CANADA,
MINISTER OF THE ENVIRONMENT (CANADA),
CANADIAN NUCLEAR SAFETY COMMISSION,
and ONTARIO POWER GENERATION INC.

Respondents

APPLICATION UNDER sections 18.1, 18.1 and 18.2 of the *Federal Courts Act*,
R.S.C. 1985, c.F-7 as amended.

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

JUN 5 2015

Date _____

JOHN GORNICK
REGISTRY OFFICER
AGENT DU GREFFE

Issued by _____

Local Registrar

Address of Court Office:

180 Queen Street West, Suite 200
Toronto, ON, M5V 3L6

TO: ATTORNEY GENERAL OF CANADA

284 Wellington Street
East Memorial Building, 4th floor
Ottawa, ON K1A 0H8
Tel: 613-992-4621

MINISTER OF THE ENVIRONMENT (CANADA)

10 Wellington Street
Les Terrasses de la Chaudière, 28th Floor
Gatineau, Quebec K1A 0H3
Tel : 819-997-1441

CANADIAN NUCLEAR SAFETY COMMISSION

280 Slater Street,
P.O. Box 1046, Station B
Ottawa, ON K1P 5S9
Tel: 613-995-5894

ONTARIO POWER GENERATION INC.

700 University Avenue
Toronto, ON M5G 1X6
Tel: 416-592-2555

APPLICATION

This is an application for judicial review of the report, conclusions and recommendations dated May 6, 2015 of the Joint Review Panel ("JRP") established under section 52 of the *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19 ("CEAA") and the *Nuclear Safety and Control Act*, S.C. 1997, c. 9 ("NSCA") on the Ontario Power Generation Inc. ("OPG") proposal for a Deep Geologic Repository for Low and Intermediate Level Radioactive Waste Project near Kincardine, Ontario ("DGR1").

CEAA Ref. No. 17520

The applicant makes application for:

1. An order declaring that:
 - 1.1. The JRP's report, conclusions and recommendations regarding DGR1 are invalid and unlawful due to non-compliance with the CEAA and the JRP's terms of reference; and,
 - 1.2. The JRP's report, conclusions and recommendations regarding DGR1 are unreasonable.
2. An order quashing or setting aside the JRP's report, conclusions and recommendations under the CEAA in relation to DGR1.
3. An order prohibiting OPG from proceeding with any further work on DGR1.
4. An order prohibiting the Minister of Environment (Canada) from proceeding with any further work in relation to DGR1, including making and issuing a decision.
5. An order prohibiting the Canadian Nuclear Safety Commission ("CNSC") from proceeding with any further work in relation to DGR1.
6. An order remitting the matter back to:
 - 6.1. A newly-constituted JRP for further consideration and determination in accordance with the CEAA and any directions as this Honourable Court considers appropriate; or,

- 6.2. In the alternative, an order remitting the matter back to the JRP for further consideration and determination in accordance with the CEAA and any directions as this Honourable Court considers appropriate.
7. An order requiring the respondents to pay the applicant the costs of this application, or in the alternative, an order that all parties shall bear their own costs.
8. Such further relief, including interim relief, as this Honourable Court may deem just.

The grounds for the application are:

9. In summary, the five main grounds for this application are:
 - 9.1 The JRP failed to comply with the CEAA.
 - 9.2 The JRP failed to comply with the "Agreement to Establish a Joint Review Panel for the Deep Geologic Repository Project by Ontario Power Generation Inc. within the Municipality of Kincardine, Ontario (including the Panel's Terms of Reference) dated December 2008 and amended August 2013" (the "Terms of Reference").
 - 9.3 The JRP failed to require OPG to fulfill the January 2009 Canadian Environmental Assessment Agency/CNSC-issued "Guidelines for the Preparation of the Environmental Impact Statement for the Deep Geologic Repository for Low- and Intermediate-Level Radioactive Wastes" for Kincardine, Ontario (the "DGR1 EIS Guidelines").
 - 9.4 The JRP failed to require OPG to fulfill the requirements of the Environmental Impact Statement ("OPG's EIS") that it filed.
 - 9.5 Bias.
10. With respect to Ground 9.2, the JRP'S failure to comply with its Terms of Reference occurred in five ways: (1) failure to require OPG to provide the necessary information for the JRP to complete its mandate; (2) failure to obtain information from sources other than OPG to complete its mandate; (3) failure to weigh evidence from sources other than OPG; (4) making findings based on questionable or non-existent evidence; and (5) the unlawful delegation of its decision-making responsibility to OPG by accepting OPG's positions without an independent consideration of alternatives.

11. One or more of the JRP's failures or errors, as set out in Grounds 9.1, 9.2, 9.3 and 9.4 above, occurred in each of the seven subject areas in paragraphs 12 to 18, below.

12. ENVIRONMENT

- 12.1. The JRP erred in failing to require OPG to file a detailed plan:
 - 12.1.1. for the treatment of all waters destined to be discharged from the stormwater management pond.
 - 12.1.2. to monitor and test concentrations of contaminants and toxic substances prior to release from the stormwater management pond.
 - 12.1.3. to provide monthly reports on the broad spectrum of parameters discharged from the stormwater management pond.
 - 12.1.4. to prevent the uncontrolled overflow from the storm water management pond to Baie de Dore, Stream C, and MacPherson Bay during a severe storm event including a 100-year storm.
- 12.2 The JRP erred in failing to require OPG to ensure that air quality emissions in the Local Study Area remain below emission standards.
- 12.3 The JRP erred in failing to require OPG to provide continuous monitoring of the quality and inflow rates of groundwater into the repository at all stages of DGR1 including construction, operation, post operation, closure, decommissioning and abandonment.
- 12.4 The JRP erred in failing to require OPG to fully study accidents and malfunctions that would result in adverse effects to human health and safety, and to the environment.
- 12.5 The JRP erred in failing to require OPG to adequately evaluate the potential for reasonably foreseeable or unplanned events, singly or in combination, to produce significant short and long-term adverse effects on the Great Lakes Basin Ecosystem, home to 40 million people and containing 20% of the world's fresh

water supply, as required under the CEAA and the Great Lakes Water Quality Agreement (“GLWQA”).

- 12.6 The JRP erred in accepting OPG’s Independent Expert Group (“IEG”) study conclusion that dilution of radionuclides is an acceptable outcome of potential leakage that could occur during the lifecycle of DGR1.
- 12.7 The JRP erred in failing to require OPG to consider an alternative site for the project in a less environmentally-sensitive location, given that the current state of the Great Lakes system is rated only as “FAIR” by the bi-national State of the Great Lakes 2011 Highlights Report, a synopsis of the environmental indicator reports prepared by Environment Canada and the United States Environmental Protection Agency. According to this report, “FAIR” means that the indicators exhibit minimally acceptable conditions, but do not meet established GLWQA or other ecosystem objectives.
- 12.8 The JRP erred in failing to require OPG to perform an adequate risk assessment analysis considering the potential synergistic effects of combinations of multiple contaminants, the effects of bioaccumulation and long retention times known to be associated with the lakes.
- 12.9 The JRP erred in failing to require OPG to use Great Lakes system wide data rather than simply point source radionuclide emissions data, which may underrepresent true values.

13. HEALTH:

- 13.1 The JRP erred in failing to require OPG to establish comprehensive baseline data needed to determine any future health impacts of DGR1.
- 13.2 The JRP erred in failing to require OPG to re-evaluate its air modelling analysis when radiological data presented in OPG’s EIS demonstrated that unpredicted and unexpected concentrations of radiological toxins were present in much higher than expected doses at a site in the Local Study Area. When asked

during the Hearings whether it would back-test the model used to determine whether it would have predicted this anomaly, OPG said it would not.

- 13.3 The JRP erred in accepting CNSC's use of administrative values as determinants of safe concentrations of radiotoxins, in contrast to international studies that demonstrate human health impacts of ionising radiation in the vicinity of nuclear power plants, even when these plants emit concentrations at or below these administrative values.
- 13.4 The JRP erred in permitting more radiation to be added to the existing baseload in the Local Study Area from existing nuclear operations, thereby further endangering the health of local residents.
- 13.5 The JRP erred in not requiring OPG to provide the baseline data to support its contention that stigma effects would only occur after emplacement operations began to residential stakeholders whose properties suffered directly from radiation that can be demonstrated to come from the DGR1.
- 13.6 The JRP erred in failing to discount the testimony of MOH Dr. Hazel Lynn, because of a conflict of interest based on her endorsement of the safety of DGR1, a paid newspaper advertisement by OPG, January 5, 2005, while she was MOH.
- 13.7 The JRP erred in failing to discount the evidence of Dr. Lynn. Dr. Lynn gave conflicting information regarding her 'qualifications' as a radiologic health professional, as evidenced by a 2005 newspaper statement that she was so qualified, while later testifying in 2011 before the Natural Resources Committee of the Parliament of Canada that she was not so qualified.
- 13.8 The JRP erred in failing to require OPG to provide evidence to the satisfaction of the JRP, that, with or without the help of the MOH, it had provided the public with information about the potential health risks of DGR1.

14. INTERNATIONAL COMITY: Both OPG and the JRP failed to give proper consideration to Canada's and Ontario's international obligations and long-standing adherence to establish principles of comity between such good neighbours as *Canada/USA* and *Ontario/Great Lakes States*, as follows:
- 14.1. Failing to consider potential adverse environmental effects of DGR1 outside of Canada, notwithstanding the requirements of the CEAA, the DGR 1 EIS Guidelines, and OPG's EIS to do so. The CEAA defines environmental effects to mean any change that may be caused to the environment that would occur outside of Canada.
 - 14.2. Failing to consider and apply the GLWQA requirements of a) the need for specific preventative programs regarding radioactive materials; b) preventing environmental threats before they turn into actual problems; and c) providing notification of activities that could impact the Great Lakes.
 - 14.3. Allowing OPG to disregard the International Joint Commission's ("IJC") policy of zero discharge of persistent toxic substances, a policy based on the precautionary approach.
 - 14.4. Failing to consider a warning to OPG and the Corporation of the County of Bruce ("Bruce County") Mayors, by the President of the CNSC in September 2009, that Michigan stakeholders opposed DGR1.
 - 14.5. Failing to accept and account for the position of American officials that full and proper notice of OPG's DGR1 proposal and the JRP's review did not occur. The JRP erred in failing to require proper and timely notice of OPG's proposal for DGR1 to the Governments of the United States and the Great Lakes States. Notwithstanding Environment Canada's attendance at the June 17-18, 2013, bi-annual meeting of the Great Lakes Executive Committee, no Canadian representative, whether formally or informally, notified the United States of the proposal for DGR1, even though the deadline for participation was less than two months away. The JRP erred in finding that informal notification of the proposal for DGR1 by the Canadian Co-chair of the

Committee to the American co-chair, on July 21, 2013, was sufficient to meet Canada's obligations. Treaty obligations are between legislative branches of government and cannot be satisfied by third parties without the express consent of both parties to the treaty.

15. PUBLIC SAFETY: The JRP erred in failing to give proper consideration to reasonably anticipated, unplanned incidents, accidents, malevolent effects and other failures that may affect public safety:
 - 15.1. Waste Isolation Pilot Plant ("WIPP"): the JRP did not require OPG to adequately provide a description of the accidents at the WIPP near Carlsbad, New Mexico, or to sufficiently explain the relevance of these accidents to worker and public health and safety (both occupational health and safety, and radiation protection requirements) at the proposed DRG1 under normal and accident conditions.
 - 15.2. The JRP did not require OPG to describe in sufficient detail how the consequences of such incidents relate to OPG's analysis of accidents, malfunctions and malevolent acts.
 - 15.3. The JRP did not require OPG to adequately account for other international failures of DGRs, and the relevance of these failures to DGR1 under normal and accident conditions.
 - 15.4. The JRP erred in failing to require OPG to provide sufficient contingency plans during the course of potential reasonably anticipated, or unplanned incidents, accidents, or malevolent acts.
 - 15.5. The JRP erred in failing to recognize that credible malfunction and accident events would be likely to cause significant adverse effects, or that multiple credible and/or unplanned events might overlap to cause significant adverse effects, despite recent operating experience and failures at DGRs internationally.

- 15.6. The JRP erred in failing to sufficiently account for increased risks to public and worker safety, from the reasonably foreseeable projects to bring decommissioning waste from other nuclear facilities to DGR1 for storage and emplacement at this planning stage, rather than deferring to a later application outside of the JRP process.

16. NEED AND COST: The JRP erred in failing to consider that much of the low-level waste did not have to be buried, and failing to consider which parts of the remainder could be recycled.

17. COMMUNITY ACCEPTANCE: The JRP erred in accepting the OPG-preferred evidence of “community acceptance”, which was obtained by egregious and deceptive practices by OPG, and unlawful conduct by Bruce County, the Bruce County lower-tier municipalities and mayors, all creatures of the Province of Ontario. The JRT erred by:
 - 17.1. Failing to reject OPG’s so-called “community acceptance” in the face of uncontroverted evidence that:
 - 17.1.1. The lower-tier municipality mayors’ support was obtained in exchange for substantial long-term ongoing cash payments by OPG to the lower-tier municipal councils through a draconian “CASH for SUPPORT” agreement which some municipalities, including the Corporation of the Town of Saugeen Shores (“Saugeen Shores”), accepted without authorization from Council. The agreement provided that if one of the lower-tier municipalities failed to support OPG’s DGR1, all municipalities lost the cash payments.
 - 17.1.2. The quid pro quo for the mayors’ promise to support OPG’s DGR1 was not just monetary. In at least Saugeen Shores, it was an understanding reached in the early (2004-2007) unlawful secret meetings, that the high-level radioactive waste used fuel waste repository (“DGR2”) would go somewhere other than Bruce County.

- 17.1.3. Municipal support was arranged and policed in a series of unlawful meetings of Bruce County Council (the lower-tier mayors), which included secret discussions on both DGR1 and DGR2 in Bruce County at a time when the public thought DGR2 would be located hundreds of miles from Bruce County.
 - 17.1.4. The same secret meetings were used by OPG to prepare and polish the mayors' testimony at the JRP Hearings.
 - 17.1.5. The same secret meetings were used by OPG in 2008 through 2010 and 2012, together with the Nuclear Waste Management Organization ("NWMO"), to strategize about the timing of NWMO's announcement that it would expand its search for a willing host for DGR2 to Bruce County. Discussions occurred at meetings regarding a strategy that might ensure that the NWMO announcement of Bruce County was deferred until after the 2010 municipal elections, thereby reducing the risk that Bruce County citizens might react unfavourably to this announcement prior to re-election. OPG did not want to lose the favourable testimony of the mayors at the JRP for DGR1 that was being developed.
-
- 17.2. Failing to give any weight to the uncontroverted evidence that Bruce County Council's support for DGR1 was similarly obtained by a secret financial incentive from OPG to Bruce County.
 - 17.3. Failing to require OPG to account for the fact that its expert, IEG, in its purported analysis of community acceptance of DGR1 in Kincardine, failed to even consider or address serious deficiencies in both the 2004 process leading to the Corporation of the Municipality of Kincardine's ("Kincardine") signing of the "CASH for SUPPORT", and the 2005 survey of Kincardine residents.
 - 17.4. Failing to require OPG to conduct public consultations on the possibility of off-site storage.

- 17.5. Failing to require the production of evidence that Bruce County municipalities participated in an open and transparent process, including public discussion of the “CASH for SUPPORT” agreement in 2004/5.

18. ADDITIONAL EXAMPLES OF FAILURE TO COMPLETE THE MANDATE: It is respectfully submitted the JRP erred by:

- 18.1. Improperly avoiding aspects of its mandate by sub-delegating issues to others, including OPG, who was obviously partial.
- 18.2. Improperly avoiding other aspects of its mandate by excessive “conditions of approval”, without limiting such aspects to matters such as future monitoring.
- 18.3. Failing to require OPG to complete and provide a reliable independent risk analysis, despite OPG having at least three opportunities (prior to filing, 2013 hearing, and 2014 hearing) to do so, erroneously leading JRP to recommend additional conditions of approval.
- 18.4. Improperly denying the parties the right to call evidence and make submissions about the cumulative adverse effects of DGR1 and DGR2 in Bruce County, and failing to consider those cumulative effects, while later stating in the JRP Report that DGR1 would be precedent-setting for DGR2.
- 18.5. Failing to fully consider and adequately assess (1) enhanced processing and improved above-ground and hardened storage options at the same site; and (2) the granitic site option.
- 18.6. In summary, recommending the OPG proposal despite multiple information gaps (initial filing prior to 2013 hearing, and prior to 2014 hearing). The information gaps included jobs not yet done that should have been done, and indeed in some cases made the JRP approval little more than an approval of OPG’s shopping or wish list.

Ground 9.5: Bias

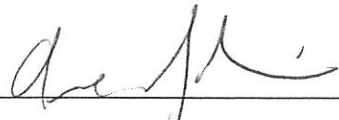
19. The JRP heard submissions regarding a reasonable apprehension of bias. The JRP lost jurisdiction by failing to recuse itself once evidence was produced that a detached reasonable observer could reasonably apprehend bias. The JRP is appointed by the President of the CNSC, and pursuant to the NSCA operates "under the direction" of the President. In September 2009, the President attended a meeting of Bruce County mayors and OPG officials and was quoted, in notes prepared by OPG, as he left the meeting, as saying: "He would see them at the ribbon-cutting ceremony." This meeting was later adjudged by an Investigator appointed by Bruce County under the *Municipal Act, 2001*, S.O. 2001, c. 25 ("*Municipal Act*"), to be an unlawful meeting of Bruce County Mayors (secret meeting in violation of the *Municipal Act*). This meeting was one of several similar meetings of the Community Consultation Advisory Group ("CCAG"), a forum for OPG to prepare and polish the upcoming testimony of Bruce County mayors before the JRP, and to police compliance with the "CASH for SUPPORT" agreement regarding DGR1, as well as secretly planning for DGR2 in Bruce County.
20. The JRP wrongly interpreted the law relating to reasonable apprehension of bias by determining that the party alleging error had to establish actual bias.
21. The matters disclosed in Grounds 9.1 through 9.4 above demonstrate the apprehension of bias was indeed reasonable and suggest the entire process at both the federal and provincial levels was replete with an unacceptable lack of detachment between the regulator and the regulated.
22. The applicant is a not-for-profit corporation that was granted Intervenor status and gave evidence and made submissions at the JRP Hearing. The applicant has a history of involvement and demonstrated interest in the DGR1 decision-making process.
23. Members of the applicant not-for-profit corporation may be directly affected by the JRP report, conclusions and recommendations.

24. Further, the applicant has public interest standing to bring this application because: it raises serious issues; the applicant has a genuine interest in this matter; and this is a reasonable manner in which the issues may be brought to this Honourable Court.
25. The applicant will rely on the following statutory provisions and rules: sections 18, 18.1 and 18.2 of the *Federal Courts Act*; the *Federal Court Rules*; the NSCA; the CEEA; and such further or other grounds as counsel may advise and this Honourable Court may consider appropriate.

This application will be supported by the following material:

1. The affidavit of Mr. Rod McLeod, Q.C., to be served.
2. The affidavit of Ms Jill Taylor, to be served.
3. The affidavit of Dr. Ellen Dailey, to be served.
4. The affidavit of Mr. Robert Eugene Bourgeois, to be served.
5. The entire record before the JRP, including but not limited to panel records, hearing documents, transcripts, etc.
6. Such further or other materials as counsel may advise.

June 5, 2015

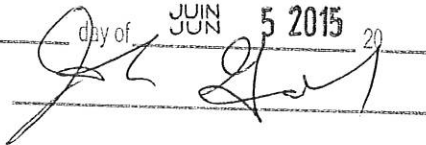
per 

David Donnelly
276 Carlaw Ave, Suite 203
Toronto, ON M4M 3L1
Tel: 416-572-0464
Fax: 416-572-0465
Solicitor for the Applicant

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____

day of JUN 5 2015 A.D. 20

Dated this JUN 5 2015 day of JUN 5 2015 20



JOHN GORNICK
REGISTRY OFFICER
AGENT DU GREFFE