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Canadian Nuclear Association submission on Bill C-69 to the House of Commons Standing Committee on Environment and Sustainable Development

The Canadian Nuclear Association (CNA) appreciates the opportunity to make a submission to the House of Commons Standing Committee on Environment and Sustainable Development (Committee). The CNA has been actively involved in all aspects of the federal assessment review process including appearing before the Expert Panel, participating in the Multi-Stakeholder Advisory Committee and providing comments on the Expert Panel Report and the federal government's Discussion Paper.

The CNA has approximately 100 members representing over 60,000 Canadians employed directly, or indirectly, in uranium mining and exploration, fuel processing, electricity generation, and the production and advancement of nuclear medicine.

Today, nuclear energy produces approximately 20% of Canada's non-emitting electricity, including 63% of Ontario's and approximately 30% of New Brunswick's. We applaud the Ontario government's province-wide coal generation phase out, which was enabled through the refurbishment of 6 reactors and supported by the Canadian nuclear industry.

Benefits of Nuclear Energy

Looking to the future, nuclear energy will play an increasingly important role in Canada's overall clean energy mix portfolio. If Canada and indeed the world are serious about achieving the Paris Accord climate targets, then the route is through greater electrification. Nuclear and hydro are the only two large baseload sources of non-emitting generation that can enable us to achieve that goal.

The CNA is pleased to see the increased support for nuclear energy from Natural Resources Canada and would encourage the Committee to support these initiatives.

The Canadian nuclear industry is also Research & Development intensive, which furthers our national manufacturing and engineering capabilities. Nuclear technology is central to almost every technical field including advanced electronics and material development, aerospace and automotive, environmental technology, food processing and, of course, nuclear medicine. Thanks to nuclear science and technology, Canada meets nine of the seventeen United Nations Sustainable Development Goals.

Canada's nuclear industry is the originator of nuclear medicine and now a leading nation globally in this vital health sector. Canada is the world leader in the production of Cobalt-60, a key asset for the sterilization of medical equipment and in the diagnosis and treatment of various diseases.

Canada's nuclear industry also works closely with Indigenous peoples and communities to enable proactive engagement and create mutually beneficial opportunities. Cameco has demonstrated the power of partnerships in improving the economic and social well-being for communities and the benefits of working together to bring about real change. Cameco has engaged with Indigenous communities in northern Saskatchewan for decades on environmental stewardship, community investment, employment, education and training and contracting opportunities.

With respect to Bill C-69, the CNA would highlight that the concept of 'cumulative impact' is not only a key issue with respect to the environment, but also with respect to sustained investment in Canadian energy projects. Large resource projects, whether a nuclear plant, a mine or a pipeline, require large amounts of capital. Capital is fluid and investors do not like uncertainty.

Right now, investment in Canada is facing significant challenges – including uncertainty around a suite of changes to federal regulatory policies as well as provincial regulatory policies, trade restrictions, corporate and individual tax rates and, in fairness, such things as commodity prices are out of Canada's control.

The CNA believes it is important to keep in mind the impact on investment when considering all legislation and policies. Our review of Bill C-69's proposed *Impact Assessment Act (IAA)* has flagged several areas where the IAA has the potential of creating lengthy timelines and uncertainty, thus further weakening Canada's investment climate. However, with some amendments and focused implementation, the IAA has the potential to balance both of the federal government's stated objectives of including "getting resources to market".

With this in mind, the CNA would like to offer the following comments and amendments for consideration on Bill C-69.

Broader Policy Issues

The CNA would like to see a process or venue developed to address broader policy issues. Bill C69 does not adequately address the need to find a separate and appropriate venue to debate and resolve broader public policy issues.

In the view of the CNA, while the IA process should consider and be aligned with the government's broader policy objectives, such as climate change and Indigenous reconciliation, the IA should not become the place where those policies are debated, much less resolved.

In the case of the nuclear industry, our operating facilities enjoy support from host communities, for their operations, as consistently needed by polling and townhall meetings. By contrast, most opponents to our projects are ideologically opposed to nuclear energy and thus will never support the project no matter what approach is used. While these groups and individuals have the right to express their views, the CNA does not believe that project impact assessment is the appropriate place to persuade them about the merits of a policy. The assessment should focus on the impact of the project not the policy.

Recommendation: Bill C69 be implemented in such a way to ensure that the IA address the specific impact of a project rather than be used as a venue to debate a specific policy.

Joint Panels

The Bill proposes that a single government agency be responsible for impact assessment reviews. In the case of the nuclear industry, the Bill only provides for the option of an Agency-led Joint Panel Review. While we have had joint panels in the past, the CNA does not believe this will be an improvement over the current process.

Many of the potential impacts considered in relation to nuclear projects are related to radiation protection and international commitments on safeguards and non-proliferation. That work must be overseen by a regulator with significant and specialized scientific expertise. The CNSC is the only place in government with that expertise. This is implicitly acknowledged by the need for joint panels. The CNA believes that assessments should remain at the CNSC as the most efficient and effective way of conducting reviews.

As a full-life cycle regulator, the CNSC licensing regime and regulatory framework already covers the entire life-cycle of the project and is subject to the *Nuclear Safety and Control Act* (NSCA) and its regulations. This allows the CNSC not only to conduct the assessment in the planning phase of the project, but also to ensure that monitoring programs and follow up conditions required by this process are directly integrated into the licensing process throughout the various stages of the projects. Our industry is unique and the CNSC has the expertise to best manage our projects.

Recommendation: Amend the Bill so that the CNSC shares equal responsibility with the Agency for the conduct of the entire Joint Panel Review process for nuclear projects including the Early Planning and Engagement Phase

Designated Project List

The Bill makes provisions for a Designated Project List to be created by regulation. This list determines what projects are subject to review in accordance with the new legislation and – by default - what projects will be reviewed by the life-cycle regulator as in the case of the nuclear industry.

This makes it difficult to fully consider the impact and consequences of the proposed Bill without, in turn, fully understanding to which projects the proposed legislation will apply.

The CNA is aware that a Discussion Paper has been issued and we will be making a further submission on the Discussion Paper. The CNA would like to offer the following comments.

The CNA believes that a facility or project should undergo one impact assessment for its lifecycle. As drafted, Section 43 could be interpreted as potentially requiring an assessment for any activity at a facility regulated under the NSCA. Maintenance activities, as well as technological and capital upgrades, are fully regulated by the lifecycle regulator, provincial regulators or other federal authorities and therefore another assessment should not be required.

In addition, many of our sites are large, with significant space for new facilities, including new reactors and research facilities that could require an IA under the new Agency. Most nuclear sites have undergone full environmental assessments and have had continuous environmental monitoring. Their environmental effects are thus well known. If a new project were to occur on one of those existing sites, then it should not require a full IA, but rather an assessment of the delta between what has already been done and what is now required. In our view, an assessment of this delta could best be undertaken by the life-cycle regulator.

Recommendation: The Designated Project List be limited to major projects not subject to existing licensing or approval requirements. CNA will provide greater detail on its recommendations in its submission on the government Discussion Paper.

Timelines

CNA members have significant concerns over the proposed timelines. We understand the government has issued a Discussion Paper on Information Requirements and Time Management Regulations and we will be submitting comments. We would like to raise the following concerns.

As mentioned earlier, investors look for certainty of process. Nuclear projects are by nature lengthy projects that require large capital investments. Anything that creates uncertainty around timelines and/or process makes it more difficult to attract and sustain investment.

The government's own timelines estimate 5 years of federal time for a Joint Review Panel assessment. Our members believe it will be significantly longer. There should be more work to clarify the process, including around the application of the numerous extension and suspension provisions.

Our members also believe the Bill creates several opportunities for significant delays, including multiple opportunities for judicial review applications as well as the potential for significant delays caused by additional scoping. There is also no timeline regarding the appointment of the Joint Review Panel.

C-69's proposed timeline is much longer than previous federal assessment timelines and does not provide any greater transparency or certainty to investors. As stated earlier, these are capital intensive projects and uncertainty makes it extremely difficult to raise investment capital, especially when there are significant costs and time required before one even gets approval to start construction.

Recommendations: Clarifications around the early planning phase, a clearly defined project list, a clearly defined and limited list of opportunities for suspension of the timelines, and a specific timeline around the appointment of a panel should help improve certainty.

Early Planning Phase

The CNA understands and appreciates the government intentions with an early planning phase, but we are skeptical of its potential effectiveness. It is not clear to the CNA how this new early planning phase will provide any more clarity and certainty.

As the early planning phase occurs after the proponent has provided an initial project description, the proponent will have already undertaken stakeholder engagement to ensure the business case and to have some degree of confidence that issues can be mitigated.

The CNA believes that the current process already allows for a responsible proponent to conduct the all-important engagement with local communities, Indigenous groups and public stakeholders.

The CNA recognizes that not all proponents undertake as detailed early engagement as necessary, but we do not believe that the default position should be a second early planning phase led by the IAA. This punishes “good proponents” and is not always necessary. In our view, the government’s objectives could be achieved by having the IAA conduct a federal verification or confirmatory review of the proponent’s early engagement process.

This could be further enhanced by the development of best practice guidelines and communication of these, which could ensure a consistent and positive approach to early engagement.

In addition to the uncertainty caused by creating a new agency-run early engagement process, Bill C-69 dramatically increases the scope of assessment by adding several new elements of review. While the criteria, aims and goals of environmental assessment are well understood and measurable, there is a great deal of uncertainty around some of the new elements of assessment.

For example, one of the new criteria is alternative means. In the case of electricity generation, it is a clear area of provincial jurisdiction. Ontario recently went through a very public process to create a long-term energy plan. Because Ontario currently has a surplus of electricity, it did not recommend new generation; but had it recommended new nuclear for example, a federal assessment would be required. Does the alternative means provision suggest the federal government would review a provincial decision in an area of clear provincial responsibility? When CNA asked the Agency this question, we did not receive a clear response.

The CNA is supportive of the government’s attempt through the early engagement phase to clarify scope, information and studies required, confirming regulatory responsibilities, minimizing overlap and including other permits, authorizations and licensing criteria in the review. This has the potential to be a very positive step in the process.

Recommendation: The Bill be amended to change the early engagement phase to an IAA verification or confirmatory review of the proponent's early engagement process. Furthermore, best practice guidelines be developed to clarify expectations and help create a consistent approach to proponent-led early engagement.

Scoping

CNA is concerned with the multiple scoping phases provided for in the process. The planning phase was intended in part to improve certainty and predictability by determining the requirements the proponent would have to meet early in the process. In our view, the Bill does not achieve that goal.

The proposed Act sets out an initial scoping by the agency as informed by federal authorities, all other jurisdictions, the public and Indigenous groups. However, the Act also allows at least two additional scoping phases – one by the sole discretion of the Agency and one by the review panel. The latter two scoping phases are well into the process and could change the scope of the project after the proponent has spent years and millions of dollars to comply with the original scoping.

For review panel reviews, a “one project, one review” process can only occur if the scoping stage is coordinated amongst the Agency, the review panel and all federal regulators as well as harmonized with provincial or other jurisdictional requirements.

Recommendation: The CNA recommends that a single, consolidated scoping led by the review panel occur early in the process and be agreed to by all jurisdictions and all federal authorities with permitting or approval responsibilities.

Cost Recovery

The Canadian Nuclear industry is subject to cost recovery under the *Nuclear Safety and Control Act*. The CNA is concerned that there is the potential for multiple cost recovery charges and regulatory fees to be applied by multiple regulators in the federal family in addition to similar provincial charges.

Recommendation: Cost recovery and regulatory fees should be transparent, predictable, reasonable, set per assessment and exclude out-of-scope costs such as regional or strategic assessments. Participant funding costs should also be excluded from cost recovery.

Decision Making Process

Our members also have concerns over how closure will be achieved with respect to issues raised through the review process. It is our view that, without some decision-making process that allows closure on contentious issues, the new IA process will simply add uncertainty, increase timelines, create additional work with minimal benefits for the project and result in early legal challenge.

Uranium Mines and Mills

The CNA would also like to propose some specific amendments with respect to uranium mining. Similar amendments have been proposed by the Mining Association of Canada and the Prospectors & Developers Association of Canada. It is our view that designated projects that are related to uranium mines and mills, like any other designated mining project, should not require an automatic panel review but rather undergo Agency-led assessments with full access to provisions for cooperation with provinces and Indigenous governing bodies.

Uranium mines and mills, like all mines and mills, are subject to provincial regulatory and permitting frameworks, but are also regulated by the (CNSC). Under previous federal environmental assessment regimes, the CNSC has been able to cooperate with the province in its oversight of uranium mines and mills. Bill C-69, however, would preclude cooperation and preclude Agency assessment for all designated projects that are regulated by the CNSC, treating all such projects as exclusively in federal jurisdiction.

There is no justification for such different treatment, given that the complexity and impacts of uranium mines and mills are not in a different category from those of other mines and mills, and cooperative approaches are just as valuable. The CNSC, like other federal regulatory bodies, would have the opportunity to be engaged in an Agency-led assessment, as provided for in the IAA to encourage coordination within the federal government.

Recommendation: The CNA urges the Committee to recommend changes to the provisions dealing with CNSC-regulated projects to permit designated projects related to uranium mines and mills to access the Agency assessment provisions of the Act, including the suite of provisions related to cooperation with provinces and Indigenous governing bodies *by amending sections 39, 43, 44, 46, and 67 to specifically exclude uranium mines and mills from the automatic panel review created by s. 43 by adding “other than a uranium mine or mill” after each reference to the Nuclear Safety and Control Act.*

Further, or in the alternative, we would propose the Bill *be amended to specifically exclude uranium mines and mills from the automatic panel review created by s. 43 by adding “other than a uranium mine or mill” after each reference to the Nuclear Safety and Control Act.*

Navigation Protection Act

CNA members have some concerns with the proposal to amend the definition of “navigable water” in Section 2 of the *Navigation Protection Act* (NPA). In our view, the proposed definition is unclear and has the potential to create confusion and could be misapplied.

In our view, a navigable water is an aqueous highway that connects places and would facilitate travel. The proposed definition could be misapplied to include small, isolated water bodies that do not connect to other navigable waters or connect places which the public or Indigenous peoples might travel.

Recommendation: Revise the definition of “navigable water” by deleting the following words “including a canal or any other body of water created or altered as a result of construction of any work”

Conclusion

The Canadian Nuclear Association and its members share the government’s objective of creating a clear and transparent impact assessment process that will allow good projects to go ahead and allow resources to get to market.

In our view, the proposed Bill in its current form does not do that. However, we believe with appropriate amendments such as outlined in this submission and with careful and disciplined implementation, the proposed legislation could be tailored to make it more likely to achieve those objectives.

The CNA would note that it is difficult to access the impact of Bill C-69 without the accompanying regulations. In particular, the Designated Project List is critical. If minor projects or projects on existing sites are forced to undergo a full panel assessment, then it will have a significant negative effect on the Canadian nuclear industry. Similarly, if improvements are not made to the proposed timeline it will limit the number of projects proposed.

The CNA is encouraged by the willingness of the committee to consider amendments that will have a positive impact on the proposed legislation and look forward to providing any further information the Committee might require.

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Sincerely,



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