



[2021] 4 F.C.R. D-17

ENVIRONMENT

Nuclear safety — Judicial review of Canadian Nuclear Safety Commission (Commission) decision to renew respondent’s licence to operate two nuclear facilities — Respondent owner, operator of nuclear fuel manufacturing facilities — In 2018, respondent applied to Commission for ten-year renewal of its Nuclear Fuel Facility Operating Licence for its two facilities in Toronto, Peterborough — Respondent’s existing licence granted in 2010 to GE-Hitachi Nuclear Energy Canada Inc. (GE-Hitachi) for ten-year term — That licence transferred to respondent following the respondent’s acquisition of GE-Hitachi — Toronto, Peterborough facilities amalgamated into single licence, allowing production of uranium dioxide fuel pellets at Toronto facility, fuel bundle assemblage at Peterborough facility — Respondent seeking Commission’s authorization to conduct commercial fuel pelleting operations at Peterborough facility — Peterborough facility located in residential area of downtown Peterborough — Commission, by majority of four-to-one, authorized respondent to produce uranium dioxide fuel pellets at its Peterborough facility, subject to three licence conditions, or “hold points”, requiring respondent to: submit, implement updated environmental monitoring program prior to commencement of fuel pellet production (Licence Condition 15.1); submit final commissioning report related to production of fuel pellets prior to commencement of commercial fuel pellet production at Peterborough facility (Licence Condition 15.2); produce fuel pellets at either Toronto or Peterborough facility, but not at both facilities (Licence Condition 15.3) — Commission majority held that respondent qualified pursuant to *Nuclear Safety and Control Act*, S.C. 1997, c. 9 (NSCA), s. 24(4) to conduct pelleting operations in Peterborough — Found that public effective dose, air uranium dioxide releases, effluent uranium dioxide releases would remain well below regulatory, licence limits — Majority, dissenting Commission member differed in their analyses of “as low as reasonably achievable (ALARA) principle, justification principle, precautionary principle, relative risk of pelleting in Toronto versus Peterborough — Applicant arguing unreasonable for Commission to qualify Licence Conditions as “hold points” — Contending that reliance on “hold points” relieves Respondent from mandatory application obligations — Submitting that respondent failed to submit requisite information in its licence application — Main issue whether reasonable for Commission to authorize pelleting operations at Peterborough facility subject to Licence Conditions 15.1, 15.2, 15.3 — Reasonable, lawful for Commission to attach Licence Conditions in form of “hold points” to Peterborough licence — Parliament providing that Commission may attach to licence “any term or condition that the Commission considers necessary for the purposes of this Act” pursuant to NSCA, s. 24(5) — This but one of several “broad powers” conferred on Commission by legislature with regard to granting licences — Broad, open language of s. 24(5) complete response to question of whether license conditions lawful, as enactment providing Commission with statutory authority to issue licence conditions in form of hold points that must be satisfied prospectively — Commission had sufficient basis on which to make reasonable conclusions pertaining to Safety and Control Areas of operating performance, safety analysis, physical design, environmental protection, as well as conformity with *Class I Nuclear Facilities Regulations*, SOR/2000-204 (Class I Regulations) — Not proper role of Court to re-evaluate evidence, come to different conclusion as to whether requirements of Class I Regulations satisfied — No provision in *Radiation Protection Regulations*, SOR/2000-203, nor in any regulatory or guidance document requiring Commission to exercise its discretion in accordance with ALARA principle in its assessment of radiation protection programs — Commission properly found that respondent complied with ALARA principle by monitoring radiation doses, implementing “action levels”, establishing ALARA Committee — Term “international obligations” in s. 24(4) not entrenching justification principle — Justification principle not satisfying criterion of *opinio juris*, not

constituting norm of customary international law — Precautionary principle not engaged in this instance — Not necessary herein to intervene in order to safeguard legality, rationality, fairness of administrative process — Application dismissed.

CITIZENS AGAINST RADIOACTIVE NEIGHBOURHOODS V. BWXT NUCLEAR ENERGY INC. (T-228-21, 2022 FC 849, Mosley J., reasons for judgment dated June 9, 2022, 56 pp.)