



**Request for ruling filed by the
Ya'thi Néné Land and
Resource Office**

**Demande de décision déposée par le
Bureau des terres et des
ressources de Ya'thi Néné**

In the Matter of the

À l'égard de

Cameco Corporation, Beaverlodge Project

Cameco Corporation, Projet Beaverlodge

**Application to amend its licence to allow
release of 18 Beaverlodge Project
properties from CNSC licensing**

**Demande de modification du permis de
Cameco visant à retirer 18 propriétés du
projet Beaverlodge du contrôle de la CCSN**

Commission Public Hearing

Audience publique de la Commission

March 24, 2022

24 mars 2022

THE CANADIAN NUCLEAR SAFETY COMMISSION

IN THE MATTER OF: Application by Cameco Corporation for a Licensing Decision: Amend the Beaverlodge Waste Facility Operating Licence to allow removal of 18 properties from CNSC licensing.

AND IN THE MATTER OF: *Canadian Nuclear Safety Commission Rules of Procedure*, SOR/2000-211, section 20(1)

REQUEST FOR RULING

Submitted By: Ya'thi Néné Lands and Resources Office

Reference CMDs: 22-H5, 22-H5.1

Date Submitted: 23 February 2022

THIS REQUEST FOR RULING IS FOR:

1. That this Request for Ruling be heard, considered and decided prior to the start of the planned Public Hearing on March 23rd and 24th 2022.
2. An order that the Hearing be adjourned indefinitely or in the alternative, be adjourned for 12 months, in order to allow for the Duty to Consult and Accommodate to be fulfilled.
3. In addition to, or in the alternative to, the Order sought at paragraph 1 herein, an order that at the Hearing, CNSC's standard procedure for public hearings will be modified in order to provide for:
 - (a) The presentation of expert evidence in writing and orally at the Hearing, including reasonable time to present and explain the evidence, and the right of cross-examination of all expert witnesses and/or witness panels by any other participant (whether the Applicant, CNSC staff or Intervenor) who is adverse in interest to the party proffering the witness(es).
 - (b) A dedicated procedure for the presentation of oral traditional evidence ("OTE") by Indigenous peoples participating in the Hearing, in a culturally safe and appropriate manner.
 - (c) Cross-examination of each Participant¹ or representative panels thereof, on their filed material, by any other Participant adverse in interest.

¹ "Participant" in this Request for Ruling refers to all of the Applicant (Cameco), CNSC Staff, and Intervenors.

- (d) Duty to Consult and Accommodate submissions by all Participants to whom the Duty to Consult and Accommodate is owed, as a separate right of submissions from any other procedural rights.
- (e) Closing submissions by all Participants, including but not limited to legal argument.
- (f) Time limits on each of the procedural steps which are reasonable and allow sufficient time to ensure that all relevant evidence is canvassed.

BACKGROUND

4. Cameco Corporation is the licensee responsible for the operation of the decommissioned Beaverlodge Mine and Mill site. As operator, Cameco is responsible for monitoring the site, and preparing it for transfer to the Government of Saskatchewan's Institutional Control Program ("ICP").
5. Transfer of the site from Cameco to the ICP requires releasing the site (or a designated portion of it) from Cameco's current Waste Facility Operating Licence (WFOL-W5-2120.1/2023). As part of the transfer, CNSC would be required to exempt the Government of Saskatchewan from licensing under the *Nuclear Safety and Control Act*.² As a result, once transferred and released from CNSC licensing, the properties are no longer regulated in the manner of Canada's other nuclear material, and is not subject to the same safety, monitoring and regulatory requirements.

² [SC 1997, c9](#) (the "Act").

6. So far, 25 properties have already completed this process and have been transferred to the ICP. Cameco retains control, and CNSC retains licensing authority, over 45 remaining Beaverlodge properties.
7. Cameco's current licence was issued in 2013, and will expire or need to be renewed in 2023.
8. Cameco submitted its application to release 18 of the 45 remaining properties from CNSC regulation on January 11, 2021³ ("Application").
9. On August 9, 2021, CNSC issued a Notice of Public Hearing for consideration of Cameco's Application. A Revised Notice of Public Hearing was issued on October 18, 2021. Pursuant to the Revised Notice, a hearing is scheduled to take place on March 23 or 24, 2022 (the "Hearing").
10. Ya'thi Néné Lands and Resources Office ("Ya'thi Néné") is the initial point of contact on consultation matters for the Black Lake Denesūliné First Nation, Hatchet Lake Denesūliné First Nation, Fond du Lac Denesūliné First Nation, all of which bear Aboriginal and Treaty rights protected by section 35 of the *Constitution Act, 1982*.⁴ Ya'thi Néné is also the designated representative of the northern municipalities of Stony Rapids, Uranium City, Wollaston Lake and Camsell Portage ("the Municipalities"). Nearly all of the residents of the Municipalities are Indigenous people who hold and exercise Aboriginal and/or Treaty rights also protected by section 35.

³ CMD22-H5.1

⁴ Ya'thi Néné is the Delegated Authority for the consultation matters for Black Lake and Hatchet Lake Denesūliné First Nations and the Consultation Coordinator for Fond du Lac Denesuline First Nation.

11. The Indigenous peoples and persons who Ya'thi Néné represents rely on the Athabasca Basin, within which the Beaverlodge properties are found, for the exercise of their rights, for sustenance, and to practice and pass on their cultures and languages. Any change to the Beaverlodge properties will likely adversely affect the rights of Ya'thi Néné members.
12. The release of the affected properties from licensing will:
 - (a) Render permanent the harm caused by the Beaverlodge project to the rights of Ya'thi Néné members, by eliminating the ability to impose remediation and safety conditions pursuant to the CNSC's regulatory authority thereby creating novel impacts;
 - (b) Eliminate key accountability mechanisms ensuring the safety of the properties;
 - (c) Create new and novel impacts to the rights of Ya'thi Néné members by intensifying, or in the alternative by not remedying, psychosocial impacts which lead to rational avoidance behaviours.
 - (d) Erode government oversight of the properties;
13. Rendering certain impacts to rights effectively permanent by eliminating regulatory oversight, preventing Ya'thi Néné members from future exercises of Aboriginal and Treaty rights in affected areas, requires that the Duty to Consult and Accommodate be fulfilled at the high end of the *Haida* spectrum.⁵

⁵ *Haida Nation v British Columbia*, [2004 SCC 73](#) at para [43](#).

14. As the decision on the Application will be made by the CNSC as an agent of the Crown,⁶ the CNSC must fulfill, and ensure that it has fulfilled, the Duty to Consult and Accommodate prior to any decision being made.⁷
15. Neither Cameco nor CNSC have fulfilled the Duty to Consult and Accommodate Ya'thi Néné and/or its members, the information which would be reasonably required to fulfill that Duty is not currently available to the CNSC. As a result, Cameco's Application is premature, and must be adjourned to allow for consultation to take place.
16. Ya'thi Néné became aware on or about February 11, 2022, of particular Denesūliné Knowledge (often referred to generically as 'Traditional Knowledge' or 'Indigenous Knowledge') which will be relevant to the determination of the application. Collecting, describing and analyzing that Denesūliné knowledge in a culturally appropriate manner, and a manner which provides useful and applicable data to the CNSC to assist in its decision making will take more time than is available prior to the submission deadline for intervention materials.

THE GROUNDS FOR THE REQUEST FOR RULING ARE:

Issue 1: Prematurity

17. The CNSC owes, and has failed to fulfill, the Duty to Consult and Accommodate ("Duty") Ya'thi Néné and its members.

⁶ The Act, c 9, s [8\(2\)](#).

⁷ *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*, [2017 SCC 41](#) at para [31](#); *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, [2017 SCC 40](#) at para [36](#).

18. Crucial questions remain outstanding, and essential information remains missing which must be available to CNSC before CNSC can make a decision. A decision made in the absence of those answers and information will lack justification, rationality and transparency, and will be unreasonable.
19. Properly answering those questions and securing the needed information is not possible now that the deadline for filing intervention materials has passed.

THE DUTY TO CONSULT AND ACCOMMODATE HAS NOT YET BEEN FULFILLED

20. Ya'thi Néné first learned of Cameco's application on August 5, 2021 upon being provided with a form letter by CNSC staff. The letter provided no substantive information about the application or how it might impact the Aboriginal and Treaty rights of Ya'thi Néné members.⁸ It reasonably expected that prior to substantial steps being taken to make the proposed significant change within its territory, it would be consulted and engaged with by both Cameco and CNSC staff.
21. Ya'thi Néné staff received subsequent form letters from CNSC on which they were blind copied, on August 11th 2021,⁹ and August 17th, 2021.¹⁰
22. That "letters of notification"¹¹ were sent informing Indigenous groups about the application is insufficient.¹² The Crown (or its agent) must do more than simply publish information and expect it to be acted upon.

⁸ Letter from Peter Fundarek to Garrett Schmidt, Aug 5 2021 [**Book of Documents, Tab 1**]

⁹ Email from CNSC.Info.CCSN@canada.ca to CNSC.Info.CCSN@canada.ca, Aug 11 2021 [**BOD, Tab 2**]

¹⁰ Email from Ryan Froess to undisclosed recipients, August 17 2021 [**BOD, Tab 3**]

¹¹ CMD22-H5, s 5.1.1, pg 64.

¹² *Ginoogaming First Nation v Ontario*, [2021 ONSC 5866](#) at para [92](#): "Letter writing, while a convenient way to paper communication, is not necessarily adequate in the Indigenous cultural context within which governments must deal...".

23. Although Ya'thi Néné was informed of the hearing in August 2021, and submitted an application for participant funding shortly after, it only received confirmation of funding (at a lower level than was applied for) on November 25th, 2021. Ya'thi Néné provided CNSC its signed contribution agreement on that same day. CNSC did not return its signed version, along with an offer to provide a funding advance, until December 16th, 2021.¹³
24. Ya'thi Néné relies on program-specific funding to conduct nearly all of its activities and fund its operations. As such, it does not have the ability to do substantial work on matters for which funding is not provided, or for which funding has not yet been confirmed through legally binding agreements.
25. While Ya'thi Néné may have had knowledge of the application in August 2021, it was not in a position to begin consultation until late November or early December. The timing of the winter holidays, during which Ya'thi Néné and many of its members closed to provide staff with much needed time off, was also a relevant factor in Ya'thi Néné's ability to engage with the Application and CNSC's notice.
26. By the time funding was confirmed and the holidays had passed, Ya'thi Néné was left with mere weeks prior to the deadline for submitting intervention materials. While CNSC agreed to a short extension of time to file those materials, that time was not sufficient to prepare the comprehensive, researched, evidence-based submissions which are reasonably required to inform the Duty to Consult and Accommodate, protect the Aboriginal and Treaty rights of Ya'thi Néné members from permanent infringement, and do justice to the traditional knowledge of Ya'thi Néné members.

¹³ Email from Adam Zenobi to Garrett Schmidt, Dec 16 2021 [**BOD Tab 4**].

CONSULTATION 'ACTIVITIES'

27. From the time it first became aware of the application until the present date, Ya'thi Néné has been invited to meet about the application with Cameco once, and with CNSC once.

28. The meeting with Cameco took place in November 2021. YNLR is not aware exactly how many people were in attendance, as Cameco organized the meeting using Zoom's webinar software, which hides the number and identity of attendees. Cameco did not offer or provide honoraria to elders or knowledge holders in attendance. The meeting consisted of a high-level presentation by Cameco containing few details and no substantive consideration of how the application would impact the exercise of aboriginal and treaty rights. Cameco asked participants if they had any questions or concerns. The participants, who were generally community members without particular expertise or technical knowledge, were not representative, nor prepared, to engage in meaningful consultation about the serious rights-based concerns raised by Cameco's application.

29. The meeting with CNSC staff took place on January 13, 2022. In attendance were leaders of Ya'thi Néné's member communities, Ya'thi Néné's Board of Directors, member of the Athabasca Land Protection Committee and Ya'thi Néné staff. CNSC staff provided a more detailed presentation than Cameco, and also agreed to provide answers to questions which Ya'thi Néné representatives asked at the meeting. However, there was no substantive, two-way discussion about Ya'thi Néné's concerns, or about possible means of accommodating those concerns.

30. The aforementioned meetings have been introductory and cursory, and while they were positive opportunities to engage, they were insufficient to meet the requirements of the

Duty to Consult and Accommodate, by even the most restrictive definition of that constitutional obligation.

31. By the time Ya'thi Néné was able to analyze the application material in order to properly investigate and determine how the application might impact Aboriginal and Treaty rights, the deadline for submitting intervention materials was approaching, and there was not enough time for proper consultation to take place.
32. Somehow, CNSC staff were able to conclude that the Duty to Consult and Accommodate had not been triggered, and that there was no potential for impacts to Aboriginal and Treaty rights (the threshold for triggering the Duty), without actually having discussed those issues with Ya'thi Néné.
33. Ya'thi Néné submits that the decision which Cameco's application requests the Commission to make might adversely impact the aboriginal and treaty rights of Ya'thi Néné members, and therefore triggers the Duty to Consult and Accommodate.¹⁴

THE REQUIREMENTS OF THE DUTY

34. The Canadian Nuclear Safety Commission "is for all its purposes an agent of Her Majesty and may exercise its powers only as an agent of Her Majesty."¹⁵ Being an agent of the Crown, the CNSC "acts in place of the Crown" and is "indistinguishable from... [the Crown], and as such, can owe a duty to consult."¹⁶
35. The courts have previously found that CNSC can owe, and fulfill, the Duty.

¹⁴ *Haida Nation v British Columbia*, 2004 SCC 73 at para [35](#).

¹⁵ *Nuclear Safety and Control Act*, s [8\(2\)](#).

¹⁶ *Peter Ballantyne Cree Nation v Canada*, [2016 SKCA 124](#) at para [61](#).

36. The Duty is prospective, aimed at preventing future harm, and thus must be discharged prior to a decision being made.¹⁷
37. The Duty must also take into consideration the cumulative impacts on the rights of the affected Aboriginal peoples, and how the current contemplated Crown conduct may add to those cumulative impacts.¹⁸ It may also consider future decisions which may result from the Crown conduct currently under consideration.¹⁹
38. The Duty arises out of section 35 of the *Constitution Act, 1982* and the Honour of the Crown. It is the primary vehicle by which the Crown ensures that its ordinary conduct does not degrade the Aboriginal and Treaty rights protected by the constitution.
39. Ya'thi Néné is not itself a rights-bearing organization, but has been empowered by its members to represent them, as a 'single-window approach' to consultation, as its members share interests in the Beaverlodge properties and other lands and waters affected by natural resource development in Nuhenéné. Ya'thi Néné's members include First Nations with inherent aboriginal rights and established Treaty Rights under both Treaty 8 and Treaty 10.
40. In signing the treaties, the Crown undertook to ensure that the "way of life" of the Aboriginal signatories would be maintained.²⁰ That obligation is ongoing, and requires the

¹⁷ *Squamish First Nation v Canada*, [2019 FCA 216](#) at para [93](#).

¹⁸ Cumulative impacts are considered as part of the Duty because "the degree of impact cannot be determined in a vacuum and past cumulative impacts may make the impact of the decision at issue more significant it would be if it were only viewed in isolation. Diana Audino et al, *Forging a Clearer Path Forward for Assessing Cumulative Impacts on Aboriginal and Treaty Rights*, 2019 57-2 Alberta Law Review 297, 2019 CanLIIDocs 3777, <<https://canlii.ca/t/spvf>> at p [303](#).

¹⁹ *West Moberly First Nations v British Columbia*, [2011 BCCA 247](#) at para [125](#).

²⁰ *Yahey v British Columbia*, [2021 BCSC 1287](#) at para [305](#).

Crown to constantly ensure that its actions are advancing the protection, and not the narrowing, of the rights promised in the treaty.²¹

41. In order to effect that protection, the Crown (here, as represented by the CNSC), must fulfill the Duty. Fulfilling the Duty is not simply a matter of giving the affected Aboriginal group an opportunity to “blow off steam”.²² It requires meaningful, two-way dialogue,²³ but crucially, must involve “**more than** ‘a process for exchanging and discussing information.’”²⁴
42. At best, the process thus far has been merely “a process for exchanging and discussing information.” At worst, it has been something more akin to the Federal Court of Appeal’s description of previous federal consultation teams’ “implementation of their mandate essentially as **note-takers**....”²⁵
43. Whether at best or worst, the CNSC lacks the basic information needed to make its decision in this case. For example:
 - (a) Will the proposed Crown conduct, the release of 18 Beaverlodge properties from Federal oversight and licensing, cause adverse impacts to Aboriginal or Treaty rights?
 - (i) CNSC Staff and Cameco have answered that question in the negative without taking any meaningful steps to verify the accuracy of their

²¹ *Yahey* at para 499 citing *Fort McKay First Nation v Prosper Petroleum Ltd*, [2020 ABCA 163](#) at para 81 (Greckol J, concurring).

²² *Mikisew Cree First Nation v Canada*, [2005 SCC 69](#) at para 54.

²³ *Gitxaala Nation v Canada*, [2016 FCA 187](#) at para 279.

²⁴ *Coldwater First Nation v Canada*, [2020 FCA 34](#) at para 41 citing *Tsleil-Waututh Nation v Canada*, [2018 FCA 153](#) at paras 500-502 (emphasis added).

²⁵ *Tsleil-Waututh* at para 562 (emphasis added).

position.²⁶ Their conclusion is based either on no evidence whatsoever, or evidence collected through methodologically flawed processes which are not sufficiently reliable to ground the Commission's work.

(ii) Ya'thi Néné advised CNSC Staff by letter to Clare Cattrysse (Director, Indigenous and Stakeholder Relations), with copy to the CNSC Registry, on February 3rd 2022, that it had become aware of this erroneous conclusion. Ya'thi Néné corrected that error by advising on a preliminary basis that there was a high likelihood that the decision would impact the constitutionally protected rights of Ya'thi Néné members.

(b) Are the properties to which the application for release applies safe for Ya'thi Néné members to exercise Aboriginal and Treaty rights, and ancillary practices, including sustenance fishing, using the water for drinking, building cabins for long-term stays, and more?

(i) CNSC Staff and Cameco fail to even engage with this crucial question, as they assume that visits to the properties are only for a short time, and that fish consumption can be limited to between 2 and 5 servings of fish (one serving being "220 grams... approximately the size of an adult's hand") per month. Both fish and drinking water from certain lakes in the area are not safe for consumption at all, even in those small amounts.

(ii) These assumptions are baffling, self-serving, and obviously inaccurate.

²⁶ CMD22-H5 at section 5.1.2; CMD 22-H5.1 at section 4.3

(iii) Ya'thi Néné have not been given the opportunity to provide CNSC Staff with the correct information which could support more reasonable assumptions of use and occupancy. Although an assessment of potential human health risks was conducted following the 2019 hearings, which was to consider the impact on human health of resource users spending more time in affected areas, Ya'thi Néné was not invited to participate in that study, and did not see the results of that study until Ya'thi Néné requested it in February 2022.

44. While all of the missing information set out in the questions above could theoretically be produced by Ya'thi Néné on its own (given enough time), and submitted to the Commission as Ya'thi Néné's intervention, the scope of CNSC Staff's and Cameco's failures in this matter have only become apparent recently, leaving insufficient time to prepare the necessary evidence for the Commission. Moreover, the Duty is the Crown's to fulfill, and while the Aboriginal party must participate in good faith (as Ya'thi Néné has done, it is the Crown that controls the process).

45. CNSC's fulfillment of the Duty to Consult must not only be reasonable in its result, it must be arrived at as a result of a process which is itself reasonable – justified, transparent and intelligible.²⁷ A decision made in the absence of crucial information, or despite contrary information which is not addressed, is not justified, transparent or intelligible.

²⁷ *Vavilov* at paras [86-87](#).

46. Providing additional time to ensure the Duty to Consult and Accommodate is fulfilled will protect the integrity of CNSC's decision-making process, and ensure that CNSC upholds the Crown's honourable obligation to Ya'thi Néné's members.

Denesų́liné Knowledge

47. On or about February 11, 2022, Ya'thi Néné was made aware of a particular instance of Denesų́liné Knowledge, in the form of a narrative, which is relevant to the determination of the application.
48. The Denesų́liné Knowledge in question is said to describe the origins of the Beaverlodge area, how the area got its name and its physical features, and its importance to the Denesų́liné and other indigenous members of Ya'thi Néné.
49. The Denesų́liné Knowledge may also describe legal rules and expectations within the Denesų́liné legal system.
50. Although the Denesų́liné Knowledge in question was previously known within the communities of Ya'thi Néné members, that knowledge, and its relevance to these proceedings was not previously known to Ya'thi Néné.
51. In order to properly describe and analyse the Denesų́liné Knowledge, Ya'thi Néné will seek funding to retain an expert in the use of the Narrative Analysis Method.²⁸ The Narrative Analysis Method (also called the ILRU Method) was developed by the Indigenous Law Research Unit (ILRU) at the University of Victoria. The ILRU Method is a means of “carefully and consciously applying adapted common law tools, such as the case method

²⁸ Hadley Friedland and Val Napoleon, “Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions.” [\(2015\) 1\(1\) Lakehead Law Journal 33.](#)

and legal analysis, to existing... Indigenous resources: *stories, narratives and oral histories*.”²⁹

52. The ILRU Method is “a shared framework for respectful and productive engagement with Indigenous legal traditions, for communities, **and between legal orders**.”³⁰ The scholars who developed the ILRU method explain that: “Indigenous stories embed law, legal principles and legal processes. Stories can be or contain a deliberate form of precedent or shared memory.”³¹ Ya’thi Néné must have an opportunity to do its due diligence with respect to the aforementioned Denesúliné Knowledge, and provide the resulting analysis to the Commission prior to a decision being made.
53. The importance of Indigenous Knowledge and its relevance to proceedings similar in kind to the Application is evident in Canadian and International law. The *Impact Assessment Act*, which is Canada’s most modern Crown approach to assessing the impacts of development, includes consideration of “Indigenous knowledge” among its purposes, and as a mandatory factor to be included in an assessment. Indigenous knowledge must not only be considered, decision makers must explain *how* it was considered.³² Consideration of Indigenous Knowledge has been incorporated into Canada’s other major impact assessment statutes as well.³³ While those statutes may not apply to this proceeding, they

²⁹ Val Napoleon and Hadley Friedland, *An Inside Job: Engaging with Indigenous Legal Traditions through Stories*, 2016 61-4 McGill Law Journal 725, [2016 CanLIIDocs 322](#) at pp [733-734](#) (emphasis in original) [“Napoleon and Friedland”].

³⁰ Napoleon and Friedland at p [734](#) (emphasis added).

³¹ Napoleon and Friedland at p [738](#).

³² See e.g. s. [84\(1\)\(b\)](#) and [102\(2\)](#).

³³ See e.g. *Canadian Navigable Waters Act*, [RSC 1985, c N-22, s 7\(7\)\(f\)](#); *Fisheries Act*, [RSC 1985, c F-14, s 2.5\(d\)](#); *Canadian Energy Regulator Act*, [SC 2019 c 28 s 10, s 183\(2\)](#).

do speak to best practices, and the reasonable expectations of Ya'thi Néné when engaging with the Crown and its agents.

54. The Federal Court has been clear that Indigenous laws and legal systems are part of Canada's legal landscape and at times have been given effect by Canadian courts.³⁴
55. Yet while Canadian legal principles and rules are readily accessible in libraries and services like CanLII, "Indigenous law, like other aspects of Indigenous peoples' lives, has been impacted by colonization."³⁵ The Truth and Reconciliation Commission of Canada's final report expressly addresses this issue, and calls for "the revitalization and application of Indigenous law."³⁶
56. Space and time must be provided for Ya'thi Néné to appropriately and in a reliable way collect, analyze, and discuss the relevant Denesūliné Knowledge, so it can be shared with the CNSC and applied in the CNSC's decision-making.

BALANCE OF CONVENIENCE ON ISSUE 1

No Prejudice to the Applicant

57. A delay of 12 months in the hearing of this Application to allow for consultation to take place will cause no substantial prejudice to Cameco, but will ensure that the Crown's honourable and constitutional obligations are fulfilled.

³⁴ *Pastion v Dene Tha' First Nation*, [2018 FC 648](#) at para 8.

³⁵ Napoleon and Friedland at p [728](#).

³⁶ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Winnipeg: TRC, 2015) at 206, online: https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Executive_Summary_English_Web.pdf > at 205.

58. As noted by CNSC Staff, Cameco is contracted by Canada Eldor Inc., a wholly-owned subsidiary of Crown corporation Canada Development Investment Corporation. By virtue of this relationship with the Federal Crown, the availability of financial resources to ensure the stability and safety of the Beaverlodge Properties is not in question. Indeed, CNSC staff rely on this relationship to justify the otherwise insufficient funding available to Saskatchewan's Institutional Control Program.³⁷ If Federal funding is sufficiently reliable in case of a catastrophic disaster, it is surely sufficient to extend Cameco's care and control of the 18 properties for one year.
59. Unlike when a proponent is seeking permission to build a project or license certain operations, Cameco does not stand to lose profits as a result of a delay in release from licensing. While it may be put to some additional cost, that cost will be in fulfillment of the Crown's constitutional obligations.

Permanent Harm to Ya'thi Néné if no delay

60. While Cameco will suffer, at worst, inconvenience by a delay, Ya'thi Néné will suffer permanent harm, and possibly extinguishment, of its Aboriginal and Treaty rights, if due consideration is not taken by the Commission prior to a decision being made.
61. The decision to release these 18 properties from licensing is permanent. Once decided, the properties will be transferred to Saskatchewan's Institutional Control Program, where they will languish with effectively no oversight, receiving *de minimis* monitoring attention once every five, and later every ten or twenty-five years. Once the release decision is made, no

³⁷ See CMD 22-H5 at s. 6.1, pg 67.

consideration will be given to the restoration of these areas, to their use for the exercise of Aboriginal and Treaty rights, or to the fulfillment of the Crown's treaty promise.

62. That the Beaverlodge properties remain licensed is the only means by which Cameco and Canada can be held accountable for direct and cumulative impacts to Ya'thi Néné's members rights.
63. Keeping the Beaverlodge properties licensed is the only way for the public, including and especially Ya'thi Néné, to ensure that Beaverlodge is safe not only for the hypothetical and unrealistic use case of 2-5 servings of fish per month, with time spent at the sites not exceeding 2 weeks per year, but also to ensure that Beaverlodge is safe for the actual exercise of Ya'thi Néné's members rights, in a manner consistent with the way of life which was promised to them by the Crown.
64. A delay of 12 months will provide Ya'thi Néné with the time needed to properly collect information, engage in meaningful two-way dialogue with CNSC staff, and propose reasonable accommodation measures to prevent or minimize the impacts to Aboriginal and Treaty rights caused by this decision.

Issue 2: Hearing Procedure

65. The procedure set out in the *CNSC Rules of Procedure*³⁸ are inconsistent with the legal and equitable requirements of procedural fairness, do not reflect the seriousness of the decision under review and do not allow for a fulsome, comprehensive and rigorous evaluation of the application. The lack of procedural fairness in the Commission's proceedings has

³⁸ [SOR/2000-211](#) (hereinafter, the "Rules")

implications on the validity of the Commission's decision from both an administrative perspective,³⁹ and a constitutional perspective.⁴⁰

66. The Rules are out of step with best practice in Canada, and lag well behind the procedures employed by federal and provincial regulatory tribunals, such as the Canada Energy Regulatory ("CER") and the Impact Assessment Agency of Canada ("IAAC"), the Alberta Energy Regulator, Manitoba's Public Utilities Board, the Ontario Energy Board, and others.
67. The Rules create a closed system, where CNSC as the Regulator speaks one-on-one with the licensee/applicant without the direct input and perspective of 'outsiders', including those who stand to be most directly impacted by the project.
68. The members of Ya'thi Néné and the way of life which the Crown promised to protect when the treaties were signed, will be directly and irreparably impacted by the Commission's decision, yet the Rules prevent Ya'thi Néné from holding CNSC staff or the proponent accountable through cross-examination, and prevent Ya'thi Néné from presenting for longer than 10 minutes.⁴¹
69. The Rules are clearly designed to maximize efficiency, which, while a laudable goal, must not be permitted to erode fairness and rigorous review. Ten minute presentation limits and no provision for interaction between Participants rely on a presumption that the CNSC panel of Commissioners ("Panel") hearing the application already know everything they

³⁹ See e.g. *Baker v Canada*, [1999] 2 SCR 817, [1999 CanLII 699](#) at paras [23-27](#).

⁴⁰ *Haida* at para [41](#).

⁴¹ The Commission's informal practice of allowing Aboriginal intervenors to continue speaking after the 10 minutes is expired is not a relevant defence to the lack of procedural fairness. If anything, this 'indulgence' by the Commission exposes the arbitrariness of the procedures.

need to know, and there is no possibility for insight from others. Canadian regulatory tribunals hold thorough and rigorous hearings because they know this to not be the case.

70. Ya'thi Néné submits that there are two primary reasons why the Commission should grant the ruling requested in Issue 2 herein:

- (a) The Rules do not provide the procedural fairness which Canadian law requires of administrative decision makers;
- (b) Under the limitations imposed by the Rules, it is not possible for the Duty to Consult and Accommodate to be discharged and the Honour of the Crown upheld.

71. The duty to provide procedural fairness varies depending on the circumstances of the decision, and requires administrative decision makers to consider:

- (a) “The nature of the decision being made and the process followed in making it;
- (b) The nature of the statutory scheme
- (c) The importance of the decision to the individual or individuals affected
- (d) The legitimate expectations of the person challenging the decision; and
- (e) The choices of procedure made by the administrative decision maker itself⁴²

72. Taking into account those factors, there ought to be little doubt that the procedural fairness required in this proceeding is high and ought to include protections approaching those of a judicial proceeding.⁴³

⁴² *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#) at para 77.

⁴³ *Baker* at para 23.

73. If granted, the decision will render permanent the infringement of the constitutionally protected Aboriginal and Treaty rights of Ya'thi Néné members. There are no issues more important to Ya'thi Néné's members than the protection of their rights and indeed the Crown's obligation to act honourably should lead to an assumption of very high levels of importance for the Crown participant as well.
74. The statutory scheme expressly permits the Commission to control its own processes by making regulations for essentially any purpose whatsoever.⁴⁴ Indeed, the current Rules are a Regulation created under the Act.⁴⁵ This control means that the Commission can be, and ought to be, flexible in how it ensures procedural fairness is provided.
75. The procedure currently chosen by the Commission as reflected by the Rules, appears to be primarily concerned with efficiency. While "[t]he Crown's duty to consult lies upstream" of CNSC's statute and regulations, the fact that the chosen procedure gives no particular consideration to the Commission's discharge of the Crown's duty to consult is nevertheless a revealing reality.⁴⁶
76. While the Commission is expected to fulfill the Duty despite not making provision for it in the Rules, the failure to include procedures for its fulfillment demonstrates that the Rules are not fit for purpose, and additional procedural fairness is required. Without changes to the rules, and no further opportunities for 'two-way dialogue' between the Commission and Ya'thi Néné after the hearing is completed, it is unclear how the Commission would

⁴⁴ *Nuclear Safety and Control Act*, [s 44\(1\)\(w\)](#).

⁴⁵ [SOR/2000-211](#).

⁴⁶ *West Moberly First Nations v British Columbia*, [2011 BCCA 247](#) at para [106](#).

propose to fulfill the Duty, if not at the hearing (which, as discussed above, lacks the procedural features necessary to fulfill the Duty).

77. As described above, reasonable and meaningful consultation requires meaningful, two-way dialogue,⁴⁷ and a demonstrated intention to address the concerns of the affected aboriginal peoples. The restrictive procedure employed by the Commission eliminates dialogue in favour of one-way presentations, and a brief series of questions by the Panel, to the presenters.
78. In order to provide a procedurally fair process which meets both the common law and constitutional requirements for procedural fairness, the Commission ought to adapt the existing procedures to include the features proposed by Ya'thi Néné in this request for ruling.

CONCLUSION

79. Ya'thi Néné asks that this Request for Ruling be determined by a Panel of the Commission, and reserves the right of reply to submissions from any other party adverse in interest to it.
80. In order to preserve its right to intervene in the application hearing if this Request for Ruling is refused, Ya'thi Néné has submitted intervention material. However, as noted therein, that intervention is incomplete, and is merely the best that could be prepared in a short period of time.

⁴⁷ *Gitxaala Nation v Canada*, [2016 FCA 187](#) at para [279](#).

THE CANADIAN NUCLEAR SAFETY COMMISSION

IN THE MATTER OF: Application by Cameco Corporation for a Licensing Decision: Amend the Beaverlodge Waste Facility Operating Licence to allow removal of 18 properties from CNSC licensing.

AND IN THE MATTER OF: *Canadian Nuclear Safety Commission Rules of Procedure*, SOR/2000-211, section 20(1)

BOOK OF DOCUMENTS

Submitted By: Ya'thi Néné Lands and Resources Office

Date Submitted: 23 February 2022

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TAB 1



Directorate of Nuclear Cycle and Facilities Regulation

File No.: 7.03.02 BVL
e-Doc 6617685

VIA EMAIL

August 5, 2021

Mr. Garrett Schmidt
Executive Director
Ya'thi Néné Land and Resource Office
P.O. Box 310
Fond du Lac, SK S0J 0W0

Subject: Canadian Nuclear Safety Commission's Notice of Cameco Corporation's Request to Release 18 Beaverlodge Properties from Licensing under the Nuclear Safety and Control Act

Dear Mr. Schmidt,

The purpose of this letter is to inform you that Cameco Corporation (Cameco) has submitted an application to the Canadian Nuclear Safety Commission (CNSC) to amend its Waste Facility Operating Licence issued to Cameco for the Beaverlodge mine and mill site in order to release 18 properties from the licence. Cameco is the operator of the decommissioned Beaverlodge sites located approximately 8 kilometres from Uranium City in northwestern Saskatchewan. The current 10-year Waste Facility Operating Licence for Beaverlodge is valid until May 31, 2023.

The site operated from 1952 to 1982 and decommissioning was completed in 1985. Comprising 70 separate properties, the Beaverlodge sites have been in a state of post decommissioning and monitoring since decommissioning was completed. In 2009, five of these properties were removed from the licence issued by the CNSC and transferred to the government of Saskatchewan's Institutional Control Program (ICP). After a public hearing in 2019, the Commission released an additional 20 properties of which 19 properties were transferred to the ICP. Cameco has requested that an additional 18 of the remaining 45 properties be removed from the CNSC issued licence. The amendment **would allow the removal of the 18 properties from its CNSC licence for the Beaverlodge Project** and enable those properties, or portions of properties requiring institutional control, to be accepted into the Province's ICP for long-term monitoring and maintenance as required.

.../2

Commission Hearing

The CNSC will hold a one-part public hearing tentatively scheduled for March 9–10, 2022 to consider an application from Cameco to amend its CNSC-issued waste facility operating licence. Indigenous groups and members of the public may intervene in the hearing process, providing an opportunity to express, orally and/or in writing, comments on the application directly to the Commission. Due to the COVID-19 pandemic, it is possible that the Commission hearing will be conducted virtually. Once available, CNSC staff will provide your community and/or organization with the *Notice of Hearing*, which will include more details on how to participate and related deadlines.

As an Indigenous group with potential interest in this licence application, the CNSC is interested in hearing views you may have with respect to Cameco’s application.

For more details on CNSC public hearing processes, you can visit the CNSC website at <http://nuclearsafety.gc.ca/eng/the-commission/hearings/index.cfm>.

Participant Funding Program

The CNSC’s Participant Funding Program (PFP) was established to enhance participation of Indigenous groups, the public and other stakeholders in the CNSC’s regulatory processes including intervening at public Commission hearings. The deadline for submitting a request for participant funding for the review of Cameco’s request to amend its waste facility operating licence is **October 1, 2021**.

Up to **\$75,000** in participant funding will be disbursed among all eligible applicants for the provision of new, distinctive and valuable information through informed and topic-specific interventions to the Commission.

The link to access the notice for participant funding opportunities is provided: <http://www.nuclearsafety.gc.ca/eng/the-commission/participant-funding-program/opportunities/index.cfm>.

If you have questions about the PFP, please contact the PFP Administrator toll-free at 613-415-2814 or by email at pfp@cncs-ccsn.gc.ca.

Staying Informed

If you wish to receive e-mail notifications when the CNSC website is updated, including notices for hearings, meetings and PFP opportunities, you can sign-up to the CNSC mailing list by visiting the following link and choosing the ‘new subscriber’ option: <http://nuclearsafety.gc.ca/eng/stayconnected/get-involved/subscribe/index.cfm>.

Further Information

For more information on the Beaverlodge site(s), please visit Cameco's dedicated Beaverlodge website at <http://www.beaverlodgesites.com/>.

Should you have any questions regarding Cameco's application for a licence renewal amendment, please contact the CNSC Senior Project Officer, Richard Snider, by e-mail at richard.snider@cnsccsn.gc.ca or by phone at 306-203-3061.

Sincerely,

Peter Fundarek, M.Sc.
Director
Uranium Mines and Mills Division
e-mail: peter.fundarek@cnsccsn.gc.ca

c.c. S. Shirley – Ya'thi Néné Land and Resource Office
Chief A. Robillard – Black Lake First Nation
Chief K. Mercredi – Fond du Lac First Nation
Chief B. Tsannie – Hatchet Lake First Nation
R. Snider, A. Levine, R. Froess, A. Zenobi - CNSC

TAB 2

Garrett Schmidt

From: CNSC.Info.CCSN@canada.ca
Sent: August 11, 2021 8:18 AM
To: CNSC.Info.CCSN@canada.ca
Subject: Apply for participant funding for March 2022 Beaverlodge Project hearing

The Commission will hold a public hearing on March 9 or 10, 2022, to consider an application from Cameco Corporation to amend its waste facility operating licence for the Beaverlodge Project near Uranium City in northern Saskatchewan.

The amendment would allow the removal of 18 properties from the CNSC licence issued to Cameco and enable those properties or portions of properties requiring institutional control to be accepted into the Province of Saskatchewan's Institutional Control Program.

We're offering funding to assist Indigenous peoples, members of the public and stakeholders in reviewing Cameco's application and associated documents, and in participating in the Commission hearing process by providing topic-specific interventions to the Commission.

Deadline to apply for funding: October 1.

For more information about the Commission hearing, visit <https://www.nuclearsafety.gc.ca/eng/the-commission/pdf/Notice-PublicHearingPFP-Beaverlodge-22-H5-e.pdf>

For more information on the participant funding opportunity, visit <https://nuclearsafety.gc.ca/eng/the-commission/participant-funding-program/opportunities/pfp-cameco-corporation-application-amend-waste-facility-operating-licence-beaverlodge-project.cfm>

For all the latest CNSC news, visit CNSC's homepage at <http://www.nuclearsafety.gc.ca/eng/>

Follow the CNSC on Twitter: http://twitter.com/CNSC_CCSN

Subscribe to the CNSC's YouTube channels: <http://www.youtube.com/cnscnccsn>

Follow the CNSC on Facebook: <http://www.facebook.com/CanadianNuclearSafetyCommission>

Follow the CNSC on LinkedIn: <https://www.linkedin.com/company/cnsc-ccsn/life>

If you experience any difficulties in accessing the CNSC website, please send an email to cnsc.info.ccsn@canada.ca

To unsubscribe, send an email to cnsc.info.ccsn@canada.ca

TAB 3

Garrett Schmidt

From: Froess, Ryan <ryan.froess@cnsccsn.gc.ca>
Sent: August 17, 2021 3:26 PM
Cc: Zenobi, Adam; Snider, Richard
Subject: Participant funding notice - Cameco Corporation - Beaverlodge Project

Good afternoon,

The Canadian Nuclear Safety Commission (CNSC) will hold a 1-part public hearing on March 9 or 10, 2022 to consider an application from Cameco Corporation (Cameco) to amend its waste facility operating licence. The amendment would allow the removal of 18 properties from its CNSC licence for the Beaverlodge Project and enable those properties or portions of properties requiring institutional control to be accepted into the Province of Saskatchewan's Institutional Control Program. The Beaverlodge Project is located near Uranium City in northern Saskatchewan.

This email is to inform you that participant funding is available to assist Indigenous peoples, members of the public, and stakeholders in reviewing Cameco's application and associated documents, and in participating in the Commission hearing process by providing written comments to the Commission.

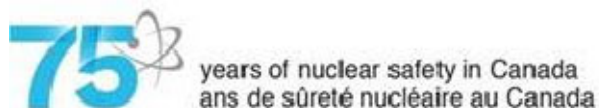
Up to \$75,000 will be disbursed among **all eligible** applicants and the **deadline to submit an application is October 1, 2021**. You can find more information about the opportunity here: <https://nuclearsafety.gc.ca/eng/the-commission/participant-funding-program/opportunities/pfp-cameco-corporation-application-amend-waste-facility-operating-licence-beaverlodge-project.cfm>

For questions about this specific funding opportunity, please contact:

Mr. Adam Zenobi
Participant Funding Program Administrator
613-415-2814
pfp@cnsccsn.gc.ca

Thanks,

Ryan Froess
Senior Policy Advisor, Indigenous and Stakeholder Relations Division
Canadian Nuclear Safety Commission
ryan.froess@cnsccsn.gc.ca | Cell: 306-914-7892



TAB 4

Garrett Schmidt

From: Zenobi, Adam <adam.zenobi@cncs-ccsn.gc.ca>
Sent: December 16, 2021 12:21 PM
To: Garrett Schmidt
Cc: Froess, Ryan; Shea Shirley
Subject: RE: CNSC Participant Funding Program - Contribution Agreement - Cameco Beaverlodge Licence Amendment - YNLR
Attachments: E-DOCS-#6703011-v1-PFP_2021_BVR-ICP-01_CA_YNLR_FINAL.PDF

Follow Up Flag: Follow up
Flag Status: Completed

This email was sent from outside the organization, please exercise caution and verify that it's from the proper sender. For questionable emails that you receive, please forward to BHTech to verify and NEVER click on links
Hello Garrett,

Please find attached the CNSC-signed contribution agreement for your records.

Also, would Ya'thi Nene benefit from receiving an advance payment for this funding? We are wanting to maximize our Participant Funding Program budget this year to help reduce some of the financial burdens we are facing next fiscal, so having you request an advance of \$17,500 would be helpful. All I would need is an email confirming that Ya'thi Nene would like the advance payment and what it will be used for.

Please let me know as soon as you can, and let me know if you have any questions, thanks!

Adam Zenobi

Policy Officer, Indigenous and Stakeholder Relations Division
Canadian Nuclear Safety Commission
adam.zenobi@cncs-ccsn.gc.ca | Cell: 613-415-2814

Agent des politiques, Division des relations avec les Autochtones et les parties intéressées
Commission canadienne de sûreté nucléaire
adam.zenobi@cncs-ccsn.gc.ca | Tél. Cell. : 613-415-2814

From: Garrett Schmidt <garrett.schmidt@yathinene.com>
Sent: November 25, 2021 9:48 AM
To: Zenobi, Adam <adam.zenobi@cncs-ccsn.gc.ca>
Cc: Froess, Ryan <ryan.froess@cncs-ccsn.gc.ca>; Shea Shirley <shea.shirley@yathinene.com>
Subject: RE: CNSC Participant Funding Program - Contribution Agreement - Cameco Beaverlodge Licence Amendment - YNLR

No problem. Attached is the signed copy.

Thanks.

Garrett