



**Written submission from the
Saugeen Ojibway Nation**

**Mémoire de la
Nation Saugeen Ojibway**

In the Matter of

À l'égard d'

Ontario Power Generation

Ontario Power Generation

Ontario Power Generation – Licence amendment application for the Darlington Nuclear Generating Station regarding the commercial production of Cobalt-60

Ontario Power Generation – Demande concernant la modification de son permis pour la centrale nucléaire de Darlington en vue de produire commercialement du Cobalt-60

Public Hearing – Hearing in writing based on written submissions

Audience publique – Audience fondée sur des mémoires

Spring 2024

Printemps 2024



The Joint Chiefs & Councils of the Saugeen Ojibway Nation

April 26, 2024

Dr. Timothy Berube
Acting President
Canadian Nuclear Safety Commission
280 Slater Street, P.O. Box 1046, Station B
Ottawa, ON K1P 5S9
Via Email: Interventions@cnsccsn.gc.ca

Attention: Canadian Nuclear Safety Commission Tribunal (CNSC) Chair and Commission Members

Dear Acting President Berube,

RE: Darlington Nuclear Generating Station licence to amend to produce Cobalt-60

We are writing regarding Ontario Power Generation's (OPG) application to amend the Darlington Nuclear Generating Station (NGS) Power Reactor Operating Licence 13.03/2025 to authorize the production of Cobalt-60. OPG did not notify or consult with Saugeen Ojibway Nation (SON) about this project despite its plans to transport and store its Cobalt-60 waste within the SON Territory. Specifically, OPG has arranged to have the spent Cobalt-60 from Darlington NGS stored at Bruce Power's Irradiated Fuel Bay and eventually the Western Waste Management Facility (WWMF), barring a long-term disposal solution. Although the relevant amendments to the Used Fuel Waste and Cobalt-60 Agreement were made in 2021 in anticipation of this application, SON only recently learned of this project by way of notice from Bruce Power.

It is deeply troubling that OPG failed to share these plans and actions with SON despite our clearly expressed long-standing and persistent concerns regarding OPG's importation of radioactive wastes into SON Territory. OPG's failure to notify and engage SON in regard to the current project is a symptom of a much larger and very significant problem. OPG continues to exploit decisions and authorizations made decades ago that allow OPG to transport and store radioactive waste from all of its facilities in SON Territory. These decisions and authorizations were made without any consultation with SON, and certainly

without SON's consent. The consequences of these decisions have had and continue to have a significant impact on SON Territory, rights, and interests.

As you are aware, SON Territory now houses the vast majority of all of Ontario's low- and intermediate-level waste, as well as 40 percent of its spent fuel and this problem grows daily. This has led to SON Territory being targeted as the preferred location for permanent radioactive waste disposal projects—first OPG's deep geological repository (DGR) for low- and intermediate-level waste, and now NWMO's proposed DGR for used fuel. NWMO has now assumed responsibility for intermediate-level waste disposal and OPG will soon begin its plans for permanent low-level waste disposal. There is every possibility that our Territory will again be targeted. These projects would change SON Territory, and our relationship to it, forever. And these outcomes feel more and more inevitable with every radioactive waste shipment OPG makes.

We are at a critical juncture for the nuclear industry. OPG itself plans to significantly increase its activities at Darlington NGS, through new build and through extended operations, and refurbishment at Pickering NGS. OPG will soon be seeking a licence renewal for WWMF to continue to exploit SON Territory to facilitate its expansion plans. OPG will once again hope to build on an unfair and unacceptable status quo that shifts risks and harms to SON for the ease of its business operations. This reckless and unreconciled infringement of SON's Aboriginal and treaty rights must end.

SON has made it clear that it will not accept the continued importation of radioactive wastes into its Territory from new or expanded operations without evidence that OPG is prepared to meaningfully address the historical and ongoing impacts from its existing operations. Unfortunately, OPG refuses to engage SON in a good faith process to resolve these issues. If these matters cannot be resolved with OPG, then it will fall to the Crown and its agents to ensure that these matters are addressed before authorizing future projects that stand to impact SON rights and interests.

The political and legal climate in which the nuclear industry is operating has shifted. Business as usual is no longer acceptable. In 2016, Canada announced its full support, "without qualification", of the *United Nations Declaration on the Rights of Indigenous Peoples* (Declaration). The rights recognized "constitute the minimum standards" (art. 43). With the adoption of the *United Nations Declaration on the Rights of Indigenous Peoples Act* in 2021, Canada committed to "implement" the Declaration and "take concrete measures to address injustices" (Preamble). It also committed to take "all measures necessary to ensure that the laws of Canada are consistent with the Declaration" (s.5). Three months ago, the Supreme Court of Canada in the *Reference re An Act respecting First Nations, Inuit, Métis children, youth and families* recognized that the Declaration "has been incorporated into the country's positive law". The Declaration can no longer be dismissed as merely aspirational. Federal regulators, including the CNSC, must act to implement its requirements now.

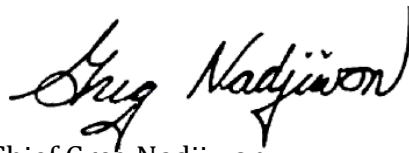
Article 29(2), regarding the storage and disposal of hazardous waste, is one of the strongest and clearest free, prior, and informed consent provisions in Declaration—there is very little room for uncertainty as to its consequences.

As an agent of the Crown and court of record, the Commission has a critical role in ensuring the Crown's constitutional obligations to Indigenous peoples are met. The continued and compounding infringements of SON rights must not occur under the Commission's watch. We ask that you delay a decision on OPG's current application until the CNSC, as Crown representative, consults with SON about this proposed project so that our concerns about it and its broader implications can be properly understood and addressed.

Migweetch,



Chief Conrad Ritchie
Chippewas of Saugeen First Nation



Chief Greg Nadjiwon
Chippewas of Nawash Unceded First Nation