



**Written submission from the
Hiawatha First Nation**

**Mémoire de la
Première Nation de Hiawatha**

In the Matter of

À l'égard d'

Ontario Power Generation

Ontario Power Generation

**Ontario Power Generation – Application to
change the licensing basis for the Pickering
Waste Management Facility**

**Ontario Power Generation – Demande
visant à modifier le fondement
d'autorisation de l'installation de
gestion des déchets de Pickering**

Public Hearing – Hearing in writing based on
written submissions

Audience publique – Audience fondée sur
des mémoires

June 2024

Juin 2024



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June 24, 2024

RE: OPG's Change Request Application for Amendment to the Pickering Waste Management Facility (PWMF) Waste Facility Operating License WFOL W4-350.00/2028

Aaniin Secretariat,

Boozhoo, Atik Dodem, Ajjaak Dodem (Nimaamaa), Mgizi Kwe Ndishnikaz, Laurie Nooswin, Minoomingaming Ndoonjaba, Michisaagiig Anishinaabe Ndaaw, Ogimaa Hiawatha. I am from the Hoof Clan and relation to the Crane Clan (My Mother), my Anishinaabe name is Eagle Woman, my English name is Laurie and I am Mississauga from Hiawatha First Nation and the Chief of our Community.

On behalf of our Council and the Citizens of Hiawatha First Nation, I am providing this written submission in response to Ontario Power Generation's ("OPG") Change Request Application for Amendment to the PWMF ("Change Request Application"). The written submissions are the view of Hiawatha First Nation only.

We appreciate the ongoing efforts of the Canadian Nuclear Sustainability Commission ("CNSC") and OPG to engage and include our First Nation in the nuclear projects, and associated activities, within our Treaty Territory. We trust that, like us, you remain committed to this path of reconciliation we have embarked upon. However, there is still much to do.

Change Request Application

With its Change Request Application, OPG is seeking to relax the terms of their storage of high-level radioactive nuclear waste in our territory. OPG is asking the CNSC to be able to process and store up to 100 Dry Storage Containers (“DSC”) containing a minimum of 6-year cooled fuel, instead of 10-year cooled. We are **opposed** to this loosening of terms regarding of high-level radioactive waste storage and believe mitigative measures to protect the environment from nuclear contamination must be strengthened, not weakened.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

The *United Nations Declaration on the Rights of Indigenous Peoples Act* (the “Act”) became federal law on June 21, 2021. I would like to highlight the following parts of the preamble of the Act for my submission:

Whereas Indigenous peoples have suffered historic injustices as a result of, among other things, colonization and dispossession of their lands, territories and resources;

Whereas the implementation of the Declaration must include concrete measures to address injustices, combat prejudice and eliminate all forms of violence, racism and discrimination, including systemic racism and discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons;

Whereas the Declaration emphasizes the urgent need to respect and promote the inherent rights of Indigenous peoples of the world which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories, philosophies and legal systems, especially their rights to their lands, territories and resources;

Whereas the Government of Canada recognizes that all relations with Indigenous peoples must be based on the recognition and implementation of the inherent right to self-determination, including the right of self-government;

Whereas the Declaration is affirmed as a source for the interpretation of Canadian law;

Whereas the protection of Aboriginal and treaty rights — recognized and affirmed by section 35 of the Constitution Act, 1982 — is an underlying principle and value of the Constitution of Canada, and Canadian courts have stated that such rights are not frozen and are capable of evolution and growth;

Whereas there is an urgent need to respect and promote the rights of Indigenous peoples affirmed in treaties, agreements and other constructive arrangements, and those treaties, agreements and arrangements can contribute to the implementation of the Declaration.

On February 9, the Supreme Court of Canada (SCC) released its decision in the “*Reference re An Act respecting First Nations, Inuit and Métis Children, Youth and Families* (the “Reference”)”. In relation to UNDRIP, at paragraph 4, the SCC says:

While the Declaration is not binding as a treaty in Canada, it nonetheless provides that, for the purposes of its implementation, states have an obligation to take, in consultation and cooperation with indigenous peoples, the appropriate measures, including legislative measures, to achieve the ends of the Declaration (art. 38). Recognized by Parliament as a universal international human rights instrument with application in Canadian law, the Declaration has been incorporated into the country’s positive law by the United Nations Declaration on the Rights of Indigenous Peoples Act, S.C. 2021, c. 14 (“UNDRIP Act”), s. 4(a). This statute recognizes that the Declaration provides a framework for reconciliation (preamble); s. 5 of the same statute requires the Government of Canada, in consultation and cooperation with Indigenous peoples, to take all measures necessary to ensure that the laws of Canada are consistent with the Declaration. The statute’s preamble expressly provides that the implementation of the Declaration in Canada must include concrete measures to address injustices facing, among others, Indigenous Youth and Children.

Ultimately, the SCC upheld that:

- 1) UNDRIP has application in Canadian law and has been incorporated into Canada’s positive law;
- 2) States have an obligation to take appropriate measures, in consultation with First Nations, to achieve the ends of the UNDRIP;
- 3) UNDRIP provides a framework for reconciliation in Canada; and,
- 4) The implementation of UNDRIP must include concrete measures to address injustices.

While the above rationale is to justify the constitutionality of child welfare legislation, the same logic must apply to other injustices affecting Indigenous Peoples, such as the 95-year persecution of the Citizens of the Williams Treaties First Nations and the denial of Rights in our Treaty Territories through violence and legal prosecution.

The 2018 Williams Treaties Settlement

In 2018, the federal and provincial Crown acknowledged the wrongful denial of our Rights, apologized for their wrongdoings, and have reaffirmed our Rights. More specifically the Crowns affirmed our Rights in pre-confederation Treaties such as the Gunshot Treaty, where the PWWF resides.

However, the denial of our rights is still the foundation of the nuclear industry's circumvention of consultation with Hiawatha First Nation regarding many of their business operations, and in this case, the storage of high-level hazardous waste in our territory.

OPG says on page 38 of their application that:

This amendment of the PWMF does not create any new adverse impacts on Aboriginal and/or treaty rights held by local Indigenous Communities. However, while the duty to consult is not triggered by this activity, OPG will engage local Indigenous Communities regardless as part of its preferred practice and in light of their interest in OPG nuclear operations.

OPG is only able to reach this conclusion based on the foundation of their past injustices against Hiawatha First Nation (we are a Nation, a Treaty Nation, and not an Indigenous Community, as written by OPG), namely not consulting with us in the first place. OPG now believes it may continue to store hazardous waste in our Treaty Territory, may request loosening the terms of the storage of high-level radioactive waste, may make such a request with no effort in consultation, and then frame their actions as going above, and beyond.

In the context of the application of UNDRIP and the application of the 2018 Williams Treaties First Nations Settlement, these are flawed and outdated assertions that are inconsistent with modern Canadian law and inconsistent with principles of reconciliation.

Furthermore, neither OPG nor the CNSC staff have indicated how they have reached the conclusion that there are no "new adverse impacts on Aboriginal and/or treaty rights held by local Indigenous communities". If OPG is able to make blanket statements such as this, which carry serious and detrimental consequences for Hiawatha First Nation, then there should be an obligation upon them to define the Rights of the First Nations previously impacted by the development and provide an explanation as to how there are no 'new adverse impacts'. When assessing whether the honour of the Crown and Aboriginal/Treaty Rights have been upheld through the duty to consult and accommodate, the determination should be supported by factual assessments, not platitudes.

Every day the high-level nuclear waste continues to sit in our Territories, is another day of impact to our Inherent and Treaty Rights. These historic decisions are not past grievances, they represent ongoing and compounding harms.

UNDRIP article 29(2), clearly states that "no storage or disposal of hazardous materials shall take place in the Lands or Territories of Indigenous Peoples without their free, prior and informed consent." Hiawatha First Nation **has never been consulted** on the storage of hazardous waste in our Treaty Territory, nor have we given our free, prior and informed consent for it to be stored in our Territory.

In their application, OPG acknowledges:

The Aboriginal and Treaty Rights of Indigenous Nations as recognized in the Constitution Act, 1982. Under its Indigenous Relations Policy, OPG regularly undertakes engagement with Indigenous Nations with established or asserted rights and/or interests.

OPG has engaged with these Indigenous Nations throughout 2022 and 2023 in order to provide them with information regarding activities at the PWSMF (such as the in-service of SB4 in 2021) and to discuss any identified issues and concerns.

Once this Addendum to the Licence Amendment application to store minimum 6-year cooled fuel is submitted to the CNSC, OPG will engage with the Indigenous Nations identified above during regular scheduled meetings and briefing to share details on the need and scope of this proposal.

There has only been one short, high-level conversation between OPG and the Hiawatha First Nation consultation team about the request for a 6-year cooling period instead of a 10-year. Also, there has only been one short, high-level conversation between CNSC staff and the Hiawatha First Nation consultation team about the request for a 6-year cooling period instead of a 10-year. These two brief conversations did not take place until May of 2024. Other engagement activities referred to by OPG or CNSC staff are only in relation to the context of our broader relationship and are **not relevant** to the decision of loosening the terms of storage for high-level radioactive waste.

I understand that OPG supports and commends the Nuclear Waste Management Organization's (NWMO) commitment to obtaining the consent of the Communities where they are seeking to construct a Deep Geological Repository (DGR) for storing nuclear waste.

I understand that OPG, in fact, abandoned the idea of a DGR in the Territory of the Saugeen Ojibway Nation (SON) once the SON formally voiced their opposition to it. As the storage of hazardous waste requires the free, prior and informed consent of First Nations Territories that are affected, it is a legal obligation of NWMO and OPG to make such commitments. It should be no different here in our Territory regarding the CNSC and OPG.

In short, the decision on the Request to Change Application requires Hiawatha First Nation's free, prior and informed consent as implemented in other Ontario jurisdictions, as is aligned with UNDRIP and the 2018 Williams Treaties First Nations Settlement, and as required under the Gunshot Treaty.

In follow up, I respectfully request that the questions below be addressed:

- 1) How is UNDRIP being implemented in this application?
- 2) How are the 2018 Williams Treaties First Nations Settlement and the Gunshot Treaty being implemented in relation to this application?
- 3) How is s.35 of the Constitution being upheld in relation to this application?
- 4) How was the conclusion that there are “no new adverse impacts on Aboriginal and/or treaty rights” been reached?
- 5) What adverse impacts to Rights have been extended and what mitigation efforts are being made?
- 6) What is OPG’s understanding of the historical and ongoing impact of the PWMF on our Nations Rights?
- 7) How will OPG work to reconcile and address historical injustices toward the Williams Treaties First Nations?

It is vital that we all take care of our Mother, the lands, waters, trees, plants, all animals, all species, as we are only borrowing these lands from our Children. In saying that, it is important that we all do the necessary work to support our/the Environment. Hiawatha First Nation will continue to do the necessary work, including supporting the submissions made by our Sister Nations at the January 2023 Hearings regarding the Darlington Waste Management Facility. We hope to hear positive updates on the requests from those hearings.

While we must continue to deal with the practicalities of the past, capitalizing on historical wrongdoings to commit further injustice today defies the rule of law, and our natural laws of protection for all our Peoples.

Chi-Miigwetch,



Chief Laurie Carr
Hiawatha First Nation