



Oral presentation

Written submission from the Mississaugas of Scugog Island First Nation

In the Matter of the

Ontario Power Generation Inc.

Applicability of the Darlington New Nuclear Project environmental assessment and plant parameter envelope to selected reactor technology

Commission Public Hearing

January 2024

Exposé oral

Mémoire de la Première Nation des Mississaugas de Scugog Island

À l'égard d'

Ontario Power Generation Inc.

Applicabilité de l'évaluation environnementale et de l'enveloppe des paramètres de la centrale à la technologie de réacteur sélectionnée pour le projet de nouvelle centrale nucléaire de Darlington

Audience publique de la Commission

Janvier 2024

Intervenor Submission: Ontario Power Generation's Darlington New Nuclear Project (DNNP)

Applicability of the Darlington New Nuclear Project
Environmental Assessment & Plant Parameter Envelope
to Selected Reactor Technology



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Mississaugas of Scugog Island First Nation
Consultation Office

November 20th, 2023



1.0 Introduction

1.1 Background

The Mississaugas of Scugog Island First Nation (MSIFN) is located on the shores of Lake Scugog in Durham, Ontario. MSIFN has a long history in this part of Ontario and is part of the Williams Treaties First Nations (WTFNs). The WTFN's territory extends from the shore of Lake Ontario in the south, Georgian Bay in the west, the Ottawa Valley in the east, and as far north as the French River. Within these treaty territories, MSIFN's priority is the protection and preservation of the lands, waters, wildlife, and fisheries that we rely on.

The Darlington New Nuclear Project (DNNP) is located within the treaty and traditional territory of the Williams Treaties First Nations, giving MSIFN a rights holding position in the project. MSIFN's reserve community is about 37 km from the project and members have expressed direct concerns and uncertainty surrounding the safety, management, and security of the nuclear reactors and waste stored on site, as well as impacts to the environment. Without ever having provided consent, our First Nation must now live with the risks associated with the Darlington Nuclear site and future plans for the DNNP. We do not have the option of relocating our treaty lands to avoid these risks to our treaty rights and community safety. The responsibility of the CNSC and OPG to keep our community members safe, and our treaty rights upheld, must not be taken lightly.

MSIFN has reviewed the documents associated with the hearing on January 22, 2024 focusing on the applicability of the DNNP environmental assessment (EA) to Ontario Power Generation's selected reactor technology, related to OPG's application for a licence to construct a reactor facility for the DNNP.

This review is outlined in the subsequent sections and has helped to inform our comments and requested conditions for license approval.



1.2 Consent and the Rights of Indigenous Peoples - Background and Facts

On September 2006, OPG applied for a Licence to Prepare Site for the Darlington New Nuclear Project (DNNP). It was determined that an environmental assessment was required, and this was referred by the Federal Minister of Environment to a Joint Review Panel (JRP) which produced the Joint Review Panel Environmental Assessment Report Summary for the project. On August 17, 2012, the JRP of the Commission announced its decision to issue a nuclear power reactor site preparation licence (PRSL) to OPG for the new nuclear project at the Darlington site for a period of 10 years. Included in the JRP Environmental Assessment Report Summary is this statement:

“The Panel recommends that the Canadian Nuclear Safety Commission exercise regulatory oversight to ensure that OPG complies with all municipal and provincial requirements and standards over the life of the Project. This is of particular importance because the conclusions of the Panel are based on the assumption that OPG will follow applicable laws and regulations at all jurisdictions levels.”

Key Facts:

- MSIFN is the closest First Nation to the Darlington New Nuclear Project site. The First Nation reserve is approximately 37 kilometres from the Project site.
- MSIFN is the only First Nation community located within the Ingestion Planning Zone (50 km) for distribution of potassium Iodide pills in the event of an emergency at the Pickering Nuclear Generating Station which is approximately 40 kilometres from the MSIFN reserve community.
- Crown land within the Gunshot Treaty at the Darlington Provincial Park on the shores of Lake Ontario was identified as a potential site for the Darlington Nuclear Generating Station (DNNGS) in the late 1960s, and former Crown Corporation Ontario Hydro purchased the plot in 1971 as an "energy centre". The Ontario Crown announced approval of the construction of the four-unit, 3500 MW DNNGS on April 18, 1977.¹

¹ (McCredie, John, 1984. Ontario Hydro's Nuclear Program Design and Construction Status. https://inis.iaea.org/collection/NCLCollectionStore/_Public/22/069/22069685.pdf)



- On June 9, 2008, the Canadian Environmental Assessment Agency (CEAA) approved up to \$100,000 to facilitate Aboriginal participation in the environmental assessment and related consultation activities. Information on the availability of funds was communicated to Aboriginal groups that could be affected by the Project. On August 19, 2009, the Funding Review Committee met to review the one application received under the Aboriginal Funding Envelope established by the Canadian Environmental Assessment in June 2008. The Committee recommended an award to the Métis. MSIFN did not receive participant funding from CEAA to participate in the environmental assessment and related consultation activities.
- According to the JRP Environmental Assessment report of 2011, *“OPG documented the asserted and established Aboriginal rights, Aboriginal title and treaty rights through a description of the content and background of the Williams Treaties (1923), including extinguishment of rights. OPG also described the Nanfan Treaty (1701), indicating that the boundaries of the Treaty fall outside of the regional study area and that the Treaty represented a surrender of title. OPG did not identify any Métis communities in the regional study area or Métis persons who are currently harvesting within this area, although it is understood that Métis persons reside within the environmental assessment study areas.”*
- The Regional Study Area for the 2009 OPG Environmental Impact Statement New Nuclear – Darlington Environmental Assessment includes a northern boundary just south of the reserve lands of MSIFN, leaving the reserve outside the Regional Study Area. The eastern boundary of the Regional Study Area is just west of the reserve lands of Hiawatha First Nation. As a result, the EIS assessment’s Regional Study Area excludes MSIFN and other Williams Treaties First Nations.
- There is no evidence in the EIS that MSIFN was asked to specifically comment on the Regional Study Area boundaries or specifically comment on Valued Ecosystem Components (VECs). Furthermore, the EIS provides no evidence of OPG dispositioning any comments from MSIFN.
- To be clear, the 2009 OPG Environmental Impact Statement New Nuclear – Darlington Environmental Assessment does not include direct evidence of comments from the Mississaugas of Scugog Island First Nation. Consultation with MSIFN appears to have been limited to the distribution of letters and documents.
- MSIFN and other Williams Treaties First Nations were never consulted by the Crown or facility operators when decisions were made to build and operate the Darlington Nuclear Generating Station or the Darlington Waste Management Facility (DWMF), or most other facilities built, operated, and regulated by the CNSC in our treaty lands.



1.3 Statement of the Mississaugas of Scugog Island

It is imperative to acknowledge that MSIFN and other Williams Treaties First Nations (WTFN) were never consulted by the Crown or facility operators during the initial decision-making processes for the establishment and operation of the DNGS, the Darlington Waste Management Facility (DWMF), or most other facilities regulated by the Canadian Nuclear Safety Commission (CNSC) on our treaty lands. The absence of consultation is a matter of considerable concern, as it has a direct impact on the MSIFN community and limits the exercise of pre-existing treaty rights of WTFNs, which were reaffirmed in 2018 under the Williams Treaties First Nations Settlement Agreement.

The constitutional protection afforded to MSIFN under section 35(1) of the Constitution Act, 1982, is a critical aspect that demands attention in this context. This section not only recognizes but also affirms the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada, thereby imposing a duty of careful consideration on regulatory processes for projects like those proposed by OPG. In parallel, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) plays a pivotal role. Despite its status as a declaration, UNDRIP should be given substantial consideration in interpreting section 35(1), especially in light of the recent adoption of the *UNDRIP Act, 2021*. This Act has introduced new legal perspectives that were absent in the deliberations of the Joint Review Panel Environmental Assessment (JRP EA), marking a significant evolution in Aboriginal law in Canada. Specifically, it underscores the recognition of Indigenous peoples as sovereign entities, thereby reshaping their legal and constitutional landscape.

Recommendation #4², as it currently stands, does not ensure Ontario Power Generation's (OPG) compliance with the requirements and standards set forth in UNDRIP or the UNDRIP Act. This includes the crucial principles of free, prior, and informed consent (FPIC) concerning land development and resource extraction, and the rights of Indigenous peoples to self-determination and to maintain their distinct political, legal, economic, social, and cultural institutions. With this

² Darlington New Nuclear Power Plant Project Joint Review Panel – Environmental Assessment Report (August, 2011). Recommendation #4: The Panel recommends that the Canadian Nuclear Safety Commission exercise regulatory oversight to ensure that OPG complies with all municipal and provincial requirements and standards over the life of the Project. This is of particular importance because the conclusions of the Panel are based on the assumption that OPG will follow applicable laws and regulations at all jurisdictions levels.



perspective in mind, it is essential that OPG's compliance encompasses adherence to requirements set forth by First Nations, including the pivotal aspect of obtaining consent throughout the project's lifespan. Such an approach is vital to foster reconciliation and to meaningfully recognize and uphold the rights of sovereign Indigenous communities like MSIFN.

On March 20, 2023, MSIFN highlighted in its submission to the CNSC regarding OPG's DNNP, the absence of an approved long-term plan for the management and storage of nuclear waste in Ontario. Given the risks associated with the storage of radioactive waste in the Treaty Territory, possibly indefinitely, MSIFN emphasized the necessity of securing consent before proceeding with the construction of the BWRX-300 reactor. Despite highlighting this crucial point, MSIFN's request has been met with silence from the Commission. Yet, the CNSC continues to acknowledge its commitment to consultation and cooperation with Indigenous partners, as well as aligning the implementation of the federal government's United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan (UNDA Action Plan), particularly concerning free, prior, and informed consent on natural resource projects, which includes both existing and proposed nuclear initiatives.

The UNDA Action Plan also speaks to making climate related decisions with the Government of Canada, supporting Indigenous leadership in conservation, weaving Indigenous science with western science to inform decision-making, and:

- Carrying out impact assessments in a manner that emphasizes the need to seek free, prior, and informed consent
- Maximizing Indigenous collaboration and partnership, including the advancement of regulations to enable agreements under p.114(1)(d) and (e) of the Impact Assessment Act
- Early, consistent, and meaningful engagement and participation through all phases of impact assessment
- Respect for Indigenous rights, culture and jurisdiction
- Mandatory consideration of Indigenous Knowledge in impact assessment
- Continually building Crown-Indigenous relations
- Supporting Indigenous capacity in impact assessment
- Consideration of health, social and economic factors, including impacts to women, youth, and Elders, and
- Consideration of any cumulative effects that are likely to result from a designated project in combination with other physical activities that have been or will be carried out.



In light of these considerations, MSIFN reiterates its request for the CNSC to mandate OPG to obtain MSIFN's consent for the Darlington New Nuclear Project (DNNP) before advancing project activities. Following the CNSC's decision on the license renewal, it is imperative that OPG engage in follow-up discussions with MSIFN regarding consent for the project, taking into account the conditions of approval required by the Commission.

2.0 Background Review

2.1 Certainty of Proposed Activities – Nuclear Waste

The recommendation made by the Panel for the Raby Head site, the headland on which the DNNP sits, regarding 'environmental protection' and 'project certainty' serves as a valuable example of best practices that can and should be implemented for the DNNP Project.

Recommendation #5 from the EA states:

“To avoid any unnecessary environmental damage to the bluff at Raby Head and fish habitat, the Panel recommends that no bluff removal or lake infill occur during the site preparation stage, unless a reactor technology has been selected and there is certainty that the Project will proceed.”

This recommendation is not only prudent but also environmentally responsible. It recognizes the importance of ensuring that significant environmental impacts, such as bluff removal and lake infilling, are avoided until there is a clear commitment to proceed with the project. It also underscores the importance of selecting a reactor technology before undertaking such activities.

MSIFN suggests that a First Nation consent provision should be formulated and enforced by the Commission for the management of nuclear waste at the DNNP site. This recommendation stems from the fact that MSIFN never provided consent to the DNGS, DWMF, and future on-site storage of nuclear waste at the Darlington site, and must now contend with the associated risks.

MSIFN recommends this provision be established through a legally binding agreement with OPG and/or the CNSC, would ensure the implementation of appropriate initiatives, such as follow-up programs that include and go beyond the 2009 environmental assessment follow-up program, reflecting the current *Impact Assessment Act*. These initiatives would work collaboratively to safeguard the environment, mitigate potential adverse effects, and uphold the rights and interests of MSIFN and other concerned WTFN.



Furthermore, MSIFN strongly urges the Commission to make it mandatory to secure the consent of concerned WTFN before engaging in any site construction and operation activities related to the proposed DNNP Project. MSIFN have inherent and Treaty rights and interests in the lands and waters in our traditional territory, and our input and consent must be sought and respected in all matters that may affect our traditional lands and peoples.

Incorporating consent into the aforementioned provision within the regulatory framework for the DNNP Project would signify a heightened commitment to environmental responsibility and reconciliation with Indigenous peoples. It would also align with Canada's legal obligations under international agreements, such as UNDRIP, and the principles of free, prior, and informed consent.

MSIFN urges the Commission to give serious consideration to this recommendation and to take appropriate steps to draft and implement a binding provision that not only safeguards the environment but also respects the rights of First Nations, particularly in the management of nuclear waste at the DNNP site.

2.2 Alternative Reactor Technologies

MSIFN wishes to express its concerns and recommendations regarding the selection of the BWRX-300 reactor technology for the DNNP at the Darlington site. MSIFN believes that the BWRX-300 reactor technology is fundamentally different from the specific reactor technologies assessed and bounded by the plant parameter envelope, as outlined in the JRP Environmental Assessment Report (JRP EA). Therefore, MSIFN requests that OPG and interested WTFN conduct a gap analysis between the JRP EA and the federal *Impact Assessment Act* (IAA) requirements. Subsequently, we encourage collaborative efforts to address any identified gaps with OPG.

The reactor designs that fell within the scope of the plant parameter envelope assessment in the JRP EA encompassed the: ACR 1000 by Atomic Energy of Canada Limited (AECL), EPR by AREVA, AP 1000 by Westinghouse, and Enhanced CANDU 6 (EC6) by AECL. As a result, the JRP EA served as the foundation for environmental considerations and the subsequent impact assessment requirements. This encompasses all environmental assessment follow-up reports as dictated by the EA and JRP recommendations, all of which were predicated on the proposed technologies and CEAA 1992.

Given the significant differences between the BWRX-300 technology and the previously assessed reactor designs, we request that the Commission require OPG to complete a gap



analysis in collaboration with interested WTFN. This analysis should aim to thoroughly assess the potential impacts linked to the BWRX-300 reactor technology (through current federal IAA requirements), including its foundation embedment, waste generation, and any other unique features that may have environmental implications beyond those initially evaluated in the JRP EA, and formulate suitable mitigation measures accordingly.

In advance of the Commission's ruling, MSIFN conducted its own gap assessment requirements and provides the Commission with the table found in Section 4, Appendix titled *Table 1: Comparison of the 1992 Canadian Environmental Assessment Act and the 2019 Federal Environmental Assessment Act*.

Furthermore, MSIFN would like to emphasize that the evaluation of alternative on-site locations for the used fuel dry storage facility is considered in the framework of the bounding site development, so long as OPG does not exceed its used fuel storage and processing specifications. Given the higher solid waste volumetric activity generated during the BWRX-300 operation, there is a possibility that OPG may exceed these specifications. This issue should be further evaluated and mitigated through meaningful collaboration between interested WTFN and OPG, as they are the primary rights holders of OPG's lands and waters on the Darlington site. It is essential to note that MSIFN has never consented to storing any on-site waste at the Darlington site.

MSIFN requests that the Commission carefully consider Recommendation #1³ made by the JRP, as well as MSIFN's above-raised concerns and accommodation request before issuing a licence to construct. MSIFN is encouraged by current dialogue with OPG concerning the gap analysis and is optimistic that this may provide appropriate accommodation for outstanding impact assessment issues. MSIFN believes that a gap analysis will require OPG to meaningfully take

³ Recommendation #1: *The Panel understands that prior to construction, the Canadian Nuclear Safety Commission will determine whether this environmental assessment is applicable to the reactor technology selected by the Government of Ontario for the Project. Nevertheless, if the selected reactor technology is fundamentally different from the specific reactor technologies bounded by the plant parameter envelope, the Panel recommends that a new environmental assessment be conducted.*



appropriate actions to address our concerns and ensure the protection of the environment and the well-being of our community considering the introduction of the BWRX-300 reactor technology.

2.3 CEAA 1992 vs. IAA 2019 and Follow-up Programs

The JRP EA states:

“The mandate of the Panel was to assess the environmental effects of the Project and to determine whether it is likely to cause significant adverse environmental effects considering the implementation of mitigation measures that are technically and economically feasible. The review of the Project was framed by the Canadian Environmental Assessment Act (CEAA) and the Nuclear Safety and Control Act. The Panel incorporated other federal, provincial, and municipal policies and requirements, industry standards, and best practices in its analysis and recommendations.”

Following the Panel’s ruling, and before OPG’s proposal to install SMR technologies at the DNNP site, the Government of Canada transitioned from CEAA 1992 to CEAA 2012 to IAA 2019. The progression of three environmental and impact assessment regimes over the last thirty years marked significant shifts in environmental assessments in Canada, now encompassing health, social, and economic impacts alongside environmental factors, together with enhanced focus on Indigenous rights and Indigenous knowledge. The IAA 2019 also considers how climate change could impact the project's feasibility and environmental impact over its lifespan, as well as the project's potential contributions to or mitigations of climate change.

It would be unfathomable today to read an environmental impact statement that did not include detailed inputs from impacted First Nations, and related health, socio-economic, climate change, avoidance, mitigation, and compensation considerations with regard to those inputs. In other words, the original 2009 OPG Environmental Impact Statement New Nuclear – Darlington Environmental Assessment, with its minimal attention to Indigenous rights and Indigenous knowledge, is an anomaly in today’s context.

A component of the IAA framework requires the assessment of potential project effects on human health, both direct and indirect. This includes using a Gender-Based Analysis Plus (GBA+), which assesses how different women, men, and gender-diverse people may experience policies, programs, and initiatives. Furthermore, it considers many other identity factors, like race, ethnicity, religion, age, and mental or physical disability. By using the GBA+, the assessment can identify how different groups of people might be uniquely affected by a proposed



project through an inclusive engagement process. For example, the GBA+ assessment can identify health and socio-cultural impacts, which includes potential project impacts associated with current use of land and resources by First Nations individuals.

The CNSC has recently written to MSIFN requesting participation today, in a Rights Impact Assessment (RIA) process that should have occurred in conjunction with the original 2009 OPG Environmental Impact Statement. MSIFN and other interested WTFNs have not been part of designing the proposed RIA and have far too little time to coordinate the intense investigations required to provide meaningful inputs to the RIA as part of the current regulatory process for the DNNP. MSIFN will be responding further to the CNSC regarding the RIA request, but for the purposes of this intervention, MSIFN wishes to make it clear that the request is not appropriate and should have come years earlier with time to collaboratively design a RIA process with the timeframe and resources required for such a significant undertaking.

A review of the 2011 JRP EA, conducted by MSIFN, suggests that OPG, and the Panel, focused primarily on environmental effects. Although social and human health impacts were analyzed by OPG, and reviewed by the Panel, the scope of the assessment is limited in considering the broader impacts of the Project (if using the IAA framework as a comparison). Specifically, MSIFN emphasizes that a uniform approach considering equal socio-economic and health status, as well as equal sensitivity to radiological and non-radiological contaminants and other hazards among humans, be used to assess the impacts related to heightened human health concerns. It is also crucial to highlight that a similar uniform approach was employed in OPG's Darlington New Nuclear Project – Health – Human and Non-Human Biota – Environmental Assessment Follow-Up Monitoring Plan / Prior to Construction Methodology Report, which was accepted by the CNSC in August 2021. The adoption of a uniform approach in a contemporary environmental assessment follow-up and monitoring process highlights that the recommendations made by the Panel are obsolete and fail to genuinely acknowledge and address the concerns raised by MSIFN.

Additionally, it is crucial for MSIFN to emphasize that a climate change risk assessment, which involves evaluating how a changing climate could impact the project's feasibility and environmental implications throughout its lifespan, was not considered in the 2011 JRP EA. Although OPG is currently performing a climate change risk assessment to satisfy the CNSC's



regulatory and governance drivers in the risk roadmap⁴, the assessment is focused on the construction of one BWRX-300 SMR and associated facilities at the Darlington site. Unfortunately, such an assessment does not accurately evaluate risks associated with multimodule SMR installations and, subsequently, cross-unit climate-related risks and interactions between the DNGS, DWMF, and the proposed SMR(s) and associated facilities. MSIFN finds it unusual that a plant parameter envelope approach was not employed in the climate change risk assessment.

Utilizing the IAA 2019 framework and implementing relevant follow-up monitoring programs with Indigenous participation represents a valuable best practice that should be adopted for the DNNP Project. This approach will facilitate more informed and equitable decision-making between OPG and interested WTFN, particularly concerning the health and climate change-related issues previously highlighted. With this perspective in mind, MSIFN strongly urges the Commission to address any overlooked gaps in the JRP EA and to establish safeguards in line with the IAA framework. This proactive step will ensure meaningful involvement of interested WTFN and safeguard their interests and concerns, ensuring they are both respected and protected in the spirit of reconciliation.

2.4 Responsible Authority

The JRP EA text states:

“The Panel further notes that its mandate for the purposes of the environmental assessment does not include a determination of the scope of the duty of the Crown to consult Aboriginal groups and whether Canada has met its duty to consult and accommodate any infringement on Aboriginal rights or title.”

Yet, in Section 6.4 – Current Use of Land and Resources by Aboriginal Persons, CNSC staff concluded that the Project is not likely to result in significant adverse effects on current use of land and resources for traditional purposes by Aboriginal persons, based on rather limited information and outcomes of engagement with Aboriginal groups OPG provided to the CNSC. Furthermore, this information was presented to the Panel, which led them to conclude that Aboriginal persons do not currently use land and resources at the Project site for traditional

⁴ NK054-PLAN-07007-00001, *Darlington New Nuclear Project Strategy for Addressing Climate Change Impacts*.



purposes. MSIFN community members and other WTFN are currently unable to use land and resources at the Darlington site, not by choice, but because it is inaccessible to the public and has been under Ontario's and OPG's site control for the past fifty plus years. Once the site is decommissioned, MSIFN and likely other WTFN will want to come back to the land for future generations. Furthermore, MSIFN community members and other WTFN *currently* use the waters and aquatic resources surrounding the Darlington site, and fully intend to use those resources for future generations.

Based on the Panel's assessment and conclusion, it (meaning the Panel) suggested that Canada has met its duty to consult and accommodate any infringement on Aboriginal rights or title; irrespective of the expressed views made by Aboriginal groups regarding the effects of the Project on the aquatic environment, boating and cultural heritage and resources.

Questions for the Commission:

- Who was responsible for the determination of the scope of the duty of the Crown to consult Aboriginal groups and whether Canada has met its duty to consult and accommodate any infringement on Aboriginal rights or title for this Project?
- Who has the responsibility today to determine the scope of the duty of the Crown to consult Aboriginal groups and whether Canada has met its duty to consult and accommodate any infringement on Aboriginal rights or title for this Project?
- What information was presented by Aboriginal groups to make the above-mentioned determination by the responsible authority?
- Was the above-mentioned determination made with the view of OPG's best efforts (i.e., sending letters, emails, telephone calls and meeting during key points in the process) while engaging Aboriginal communities?
- Was the scope of the Duty to Consult met? If so, how was it met, according to the responsible authority?



3.0 Conclusion

MSIFN reiterates the requests made throughout the above text, mainly, MSIFN requests:

- 1. CNSC require OPG to obtain consent from MSIFN and other WTFN for the Project prior to issuing a license to construct.**
 - In March 2023, in a submission to the CNSC on the DNNP Plant Parameter Envelope and Environmental Impact Statement reports, MSIFN requested that consent should be considered before the construction of the first SMR, given that there is no approved long-term plan for the management and storage of nuclear waste in Ontario. Until a plan is in place, we must live with the risk of storing this additional radioactive waste in our Treaty Territory indefinitely.
 - These current and planned facilities on the Darlington site limit the exercise of our pre-existing treaty harvesting rights, which were reaffirmed in 2018 under the Williams Treaties First Nations Settlement Agreement.
 - Again, we are requesting that the CNSC require OPG to secure consent for the DNNP project before a license is granted, or project activities proceed.
- 2. CNSC require OPG to complete a gap analysis between the JRP EA and the current federal IAA requirements.**
 - Given the significant differences between the chosen SMR technology and the previously assessed reactor designs in 2011, OPG should be required to complete a gap analysis. The gap analysis should assess the potential impacts linked to the SMR reactor technology through federal Impact Assessment Act requirements, including waste generation, and any other unique features that may have environmental implications beyond those initially evaluated in the 2011 EA.
 - OPG, alongside interested WTFN, would conduct a gap analysis between the JRP EA and the federal IAA requirements and proceed to work collaboratively to address gaps.
 - Discussions between MSIFN and OPG are continuing with regards to a gap analysis process and next steps.
- 3. CNSC and OPG provide greater clarity and a plan for nuclear waste**
 - The proposed Darlington New Nuclear Project will generate more solid radioactive waste than other reactor technologies considered for the site, with no long-term plan for the waste's management, storage, or disposal.
 - MSIFN never provided consent to the Darlington Nuclear Generating Station, Darlington Waste Management Facility, or future on-site storage of nuclear waste at the Darlington site. We must now contend with these associated risks.



- There is no approved long-term solution for nuclear waste in Ontario.
 - In light of these considerations, we reiterate the request for the CNSC to mandate OPG to obtain consent for the DNNP before advancing project activities.
 - We also request that the Commission recommend no significant environmental impacts, such as alteration of the shoreline or lands, be allowed to happen on the Darlington site until OPG can provide greater certainty around the plan for nuclear waste generated at the future DNNP.
- 4. CNSC mandate a follow-up program to be completed by OPG in collaboration with interested WTFN.**
- Under the IAA 2019 framework there is a requirement for a mandatory federal follow up program. This federal follow up program would deal with all outstanding aspects of the original EA in the context of IAA 2019.
 - As OPG and MSIFN continue discussions for a gap analysis approach, MSIFN is determined that the Commission could order a mandatory follow-up program that follows the principles of the current IAA framework and the full scope of follow-up program enabled by IAA 2019.
 - Alternatively, OPG and MSIFN could reach a binding agreement on such a follow up program. It is not clear to MSIFN which of these two pathways is the most appropriate.

MSIFN would also like to re-state the conditions of approval requested in its December 2022 submission regarding Ontario Power Generation's application to renew its Darlington Waste Management Facility operating licence.

1. **Commit to Meeting with Leadership to Review International Best Practices:** OPG and CNSC staff meet with MSIFN leadership to review and present a paper providing a comparison and contrast assessment of current international best practices for the management and storage of used nuclear fuel at reactor sites with current practices at the Darlington site. OPG should provide MSIFN with capacity funding to hire international experts to peer review the comparison and contrast assessment paper. This will allow MSIFN leadership to better assess the risks and potential impacts, accidents, malfunctions and terrorist threats at the waste facility on the MSIFN community, and understand OPG's standards.
2. **Offsite Restoration Fund:** To work towards the restoration and stewardship of the landscape around the Darlington site, MSIFN requests that OPG establish a restoration fund that would facilitate projects on lands within and outside of OPG Darlington's site



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control in collaboration with First Nations, other governments (e.g., municipalities), and environmental groups. This funding should sustain projects over the medium to long term, helping to fill the gap that exists due to this type of this funding currently being largely offered by government grants with short cycles (i.e., 1 – 3 years).

The above requests have yet to be properly addressed, although we continue discussions with OPG and the Commission.

MSIFN is committed to ensuring the CNSC and OPG advance the DNNP project in the right way. At the forefront of this should be the rights and consent of impacted First Nations, protection of the environment by adhering to the highest standards, and long-term planning for safe storage and management of nuclear waste. We look forward to continuing these discussions.



4.0 Appendix

Table 1: Comparison of the 1992 Canadian Environmental Assessment Act and the 2019 Federal Environmental Assessment Act

	Canadian Environmental Assessment Act 1992	Amendment 2003	Impact Assessment Act 2019
Link	https://laws.justice.gc.ca/eng/acts/c-15.2/20100712/P1TT3xt3.html	https://laws.lois.justice.gc.ca/eng/annualstatutes/2003_9/page-1.html	https://laws.justice.gc.ca/eng/acts/i-2.75/FullText.html
Purposes	<p>(s.4)</p> <ul style="list-style-type: none"> ▪ Ensure projects do not cause significant adverse environmental effects ▪ Encourage sustainable development ▪ Coordinate the environmental assessment process ▪ Promote cooperation and communication between governments ▪ Ensure Canadian projects have no adverse impact to outside jurisdictions ▪ Ensure opportunities for meaningful public participation 	<p>(s.4)</p> <p>The purpose of the Act are:</p> <ul style="list-style-type: none"> ▪ To ensure projects are considered in a careful, precautionary manner and do no cause environmental impact ▪ To promote cooperation and coordinated action between fed/prov governments ▪ Promote communication and cooperation between Aboriginal peoples regarding 	<p>(s.6)</p> <ul style="list-style-type: none"> ▪ Foster sustainability ▪ Protect environment and health, social and economic conditions ▪ Establish a process that encourages innovation and competitiveness ▪ Ensure impact assessments take into account all effects ▪ Consider adverse effects on other jurisdictions ▪ Promote cooperation and coordination ▪ Ensure respect for the rights of Indigenous peoples ▪ Ensure opportunities for meaningful public participation ▪ Ensure timeliness ▪ Ensure assessment will take into account scientific information, and Indigenous and Community knowledge and other means



		<p>environmental assessment.</p> <ul style="list-style-type: none"> ▪ Ensure timely, meaningful public participation 	<ul style="list-style-type: none"> ▪ Encourage the assessment of cumulative effects of impact assessments ▪ Encourage follow-up programs
Prohibitions	There are no explicit prohibitions under this Act.	No amendments.	<p>Proponents cannot change:</p> <ul style="list-style-type: none"> ▪ Fisheries Act, Species at Risk Act, Migratory Birds Act; ▪ A change to the environment ▪ Impact Indigenous peoples cultural heritage, use of lands, and structures, EXCEPT for if that Indigenous group authorizes that act. ▪ Health, social or economic conditions
What Projects need to be assessed?	<p>Environmental assessment is required before a federal authority can perform certain activities (s.5).</p> <p>Projects do not require assessment if it's on the exclusions list, is designed to carry out national emergency measures, or is being carried out to prevent damage of property (s.7).</p>	For greater certainty, assessment not required for functions 5(1)(b) or 10.2(b) or person exercising a power under 5(1)(b), 9(2)b, or 10(1)(b)	<p>(s.9) The Minister may designate a physical activity that is not prescribed by the regulations if there is concern for adverse effects or incidental effects or public concerns warranting the designation.</p> <p>The Minister may consider the adverse impacts that a physical activity may have on the rights of the Indigenous Peoples of Canada (including indigenous women). (s.9.(2))</p>
Hamilton Harbour	s. 9 Environmental Assessment under Hamilton	s. 9, the Hamilton Harbour	No such provision under this Act.



	<p>Harbour Commission or Port Authority will be conducted where: a person or body is a proponent, authorizes payments, leases federal lands, issues a permit or licenses or grants approval to enable the project, or the project is carried out in whole/part on federal lands.</p> <p>s. 10, if a project is to be carried out in whole/part on reserve lands, the band must ensure assessment with the regulations, if the band council is a proponent, authorizes payments or provides a loan, take any action to enable the project.</p>	<p>Commissioners assessment will be conducted where: a person under ss.(1) is the proponent of the project, authorizes payment or provides a loan, or otherwise leases federal lands.</p> <p>s.10, if a project is to be carried out in whole or in part on a reserve land, council of the band shall ensure an environmental assessment is conducted with the regulations.</p>	
<p>Assessment Coordinator / Agency</p>	<p>s.12 The Assessment coordinator will ensure specialists and experts are identified, coordinate their involvement, ensure the fulfillment of obligations, coordinate other jurisdictions.</p>	<p>No amendment</p>	<p>No coordinator designated under the Act, although either the Agency or Review Panel may have coordinators.</p>
<p>Planning Phase</p>	<p>Environmental Assessment Process includes (a) a screening or comprehensive study; (b) a mediation or assessment by review panel (c) the</p>	<p>No amendment</p>	<p>When preparing for a possible impact assessment of a designated project, the Agency must offer to consult with any jurisdiction and any</p>



	<p>design and implementation of follow up program.</p> <p>Where there is no assessment required, the Minister may refer a project to mediation if there is concern it may cause adverse environmental effects on:</p> <p>(s.48(1))</p> <ul style="list-style-type: none"> ▪ Indian Reserve Lands ▪ Other federal lands ▪ Lands described in the Land Claims Agreement ▪ Lands set aside for the use and benefit of Indians ▪ Lands that have Indian interests <p>▪ The Minister will not refer a project to mediation if there has been another manner of conducting an assessment agreed to (4.1.(3)).</p>		<p>Indigenous group that may affected. (s.12)</p> <p>In making its decision whether the impact assessment is needed, the agency must consider the description, the possibility of adverse effects, the impact on the rights of Indigenous peoples, any commentary received from any other jurisdiction or Indigenous group, any relevant assessment or study, or any other relevant factor. (s.16(2)).</p> <p>Information Gathering: if an assessment is required, the agency must provide the proponent with (a) a notice of commencement of the assessment and (b) any documents prescribed regarding the information or studies for planning/cooperation with the Indigenous peoples, for public participation (s.18(1)).</p>
<p>Environmental/ Impact Assessments</p>	<p>Factors to be considered in a screening or comprehensive study (s.16):</p>	<p>No amendment</p>	<p>Factors to be considered in an Impact Assessment: (s.22)</p>



	<ul style="list-style-type: none"> ▪ Environmental effects of malfunctions or accidents that may occur in connection or the cumulative effects and their significance ▪ Comments from the public ▪ Measures that are technically and economically feasible ▪ Any other relevant assessment ▪ The purpose of the project ▪ Alternative means of the project ▪ Need for follow up programs ▪ Capacity of renewable resources ▪ Community knowledge and aboriginal traditional knowledge may be considered in conducting an environmental assessment ▪ Regional studies may be considered 		<ul style="list-style-type: none"> ▪ Changes to environment, health, social or economic conditions ▪ Mitigation measures for the adverse effects ▪ Impact on Indigenous groups and their s.35 rights ▪ Purpose of and need for project ▪ Alternative means of carrying out project that are feasible ▪ Indigenous knowledge provided with respect to the designated project ▪ Sustainability and environmental consideration ▪ Any changes caused by the environment ▪ Follow-up requirements ▪ Indigenous cultural considerations ▪ Community knowledge ▪ Comments received from the public and other jurisdictions ▪ Relevant assessment information ▪ Assessments from Indigenous governing bodies ▪ Studies or plans conducted by another jurisdiction or Indigenous body ▪ Intersection of sex and gender ▪ Any other relevant matters.
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<p>Impact Assessment by Agency</p>	<p>Not a feature of this Act.</p>	<p>No amendment</p>	<p>An Agency must ensure that an impact assessment is conducted, and a report is prepared. They can also consider: (s.24 – 29)</p> <ul style="list-style-type: none"> ▪ Any available information ▪ Studies and collection of information ▪ Public participation ▪ Public notice ▪ Final report and its effects and the Indigenous Knowledge included ▪ Delegation authority ▪ Non-disclosure
<p>Impact Assessment by a Review Panel</p>	<p>Environmental Assessment or mediation by a review panel, who will prepare a report (s.29)</p> <p>A mediator and/or review panel may be appointed who is unbiased and free from conflict of interest, and who has knowledge or experience as a mediator. (s.30) (s.33)</p> <p>The mediator will prepare a report (s.32).</p> <p>Where there is a review panel, the review panel must</p>	<p>No amendment</p>	<p>The impact assessment may be reviewed by a review panel if: (s.36)</p> <p>There is public interest in the adverse impact on other jurisdictions and opportunities for cooperation and any adverse impacts that the designated projects may have on the rights of the Indigenous peoples.</p> <p>A notice of the review panel must have established time limits.</p> <p>Members are appointed within 45 days of notice and must be unbiased and free from conflict of interest, and</p>



			<p>must have knowledge or experience regarding the anticipated effects and concerns of the Indigenous peoples (s.41 and 42).</p> <p>The Panel has duties to: (s.51)</p> <ul style="list-style-type: none"> ▪ Conduct an impact assessment ▪ Ensure that the information is available to the public ▪ Hold hearings that facilitate public participation ▪ Prepare a report (which must take into account Indigenous knowledge (s.59(3))). ▪ Submit the report to the Minister ▪ Clarify any conclusions upon request
<p>Duties of Certain Authorities</p>	<p>"Responsible Authority" – where an assessment is required it should be conducted as early as possible. (s.11)</p> <p>Where there are two or more authorities, they work together to determine the manner in which to perform their duties under the Act. (s.12)</p>	<p>No amendment</p>	<p>Every federal authority with expertise must make that knowledge or information available to the authority (s.85).</p> <p>An authority must not carry out a project on federal lands or exercise any power unless the project will not cause significant adverse environmental effects or those effects are justified (s.82).</p>



			<p>“Environmental effects” means changes to the environment and the impact of these changes on the Indigenous peoples of Canada and on health, social or economic conditions (s.81).</p> <p>A determination whether the project will cause significant adverse environmental effects must be based on: (s.84)</p> <ul style="list-style-type: none"> ▪ Adverse impacts on the Indigenous peoples of Canada ▪ Indigenous knowledge ▪ Community knowledge ▪ Comments received from the public ▪ The mitigation measures that are technically and economically feasible
<p>Regional Assessments and Strategic Assessments</p>	<p>Not of a feature of this Act.</p>	<p>No amendment</p>	<p>Regional Assessments may be conducted to assess the effects on a particular region (s.92).</p> <p>Strategic Assessments may be ordered to assess Government plans, programs, or policies on any issue relevant to conducting impact assessments (s.95).</p>



			<p>General Rules (s.96): if the Minister establishes a committee for Regional or Strategic assessments, the committee must:</p> <ul style="list-style-type: none"> ▪ take into account any scientific information to Indigenous knowledge, including the knowledge of Indigenous women. (s.97(2)). ▪ Public participation ▪ Federal authority ▪ Indigenous Knowledge (s.102(2)).
Canadian Impact Assessment Registry	A Registry is maintained facilitating public access to environment assessments (s.55)	No amendment	A Registry is maintained consisting of project files, which is accessible by the public (s.104)
Administration	No explicit provision under this Act	No amendment	<p>For the purpose of the Act, the minister may: (s.114)</p> <ul style="list-style-type: none"> ▪ Issue guidelines and codes ▪ Establish research and advisory bodies in the area of assessment ▪ Enter into agreements within any jurisdiction or Indigenous governing body as permitted by the regulations. <p>The Minister must establish an advisory council to advise on regional and strategic assessment. Membership must include at least:</p> <ul style="list-style-type: none"> ▪ One person representing the interests of First



			Nations and Inuit and Metis. (s.117)
Indigenous Knowledge	No such provision under the Act.	No amendment	<ul style="list-style-type: none"> ▪ Any indigenous knowledge that is provided to the Minister under prescribed sections is confidential (s.119), except if it is publicly available, disclosure is necessary for procedural fairness, or it was authorized. ▪ Before disclosing for the purpose of procedural fairness, the Minister must consult the person or entity who provided the Indigenous knowledge.
Enforcement	No explicit enforcement powers under the Act, except the review panel's ability to summon witnesses.	No amendment	<p>(s.122) Enforcement Officers have powers on entry to examine anything, use any means of communication or computer system or equipment, prepare a document, take photos, direct the owner to establish their identity, direct anyone to put machinery in use or cease operating it, prohibit or limit access.</p> <p>Analysts have similar powers if they are accompanied by an Enforcement Officer.</p>
Impact Assessment	No such provision under the Act, however the	No amendment	The Impact Assessment Agency advises and assists the minister in exercising the



<p>Agency of Canada</p>	<p>"Coordinator" seems to fulfill a similar function.</p>		<p>powers and performing the duties and functions (s.153(1)). The Agency's object are (s.155):</p> <ul style="list-style-type: none"> ▪ Condit and administer impact assessments ▪ Coordinate the consultations with Indigenous groups ▪ Promote harmonization at all levels of government ▪ Promote or conduct research in matters of impact assessment ▪ Promote impact assessment ▪ Promote, monitor and facilitate compliance ▪ Promote and monitor the quality of impact assessments conducted ▪ Develop policy ▪ Engage in consultation with the Indigenous peoples of Canada <p>Expert committee must be established by the Agency (s.157). The Expert Committee must include one Indigenous Person.</p> <p>The Advisory Committee must be established by the Expert committee to advise regarding issues of the Indigenous Peoples of Canada and must include on</p>
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			person from the First Nations and the Inuit and the Metis communities.
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