



Oral presentation

Exposé oral

**Written submission from the
Saugeen Ojibway Nation**

**Mémoire de la
Nation ojibway de Saugeen**

In the Matter of the

À l'égard d'

Ontario Power Generation Inc.

Ontario Power Generation Inc.

Application for a licence to construct one
BWRX-300 reactor at the Darlington New
Nuclear Project Site (DNNP)

Demande visant à construire 1 réacteur
BWRX-300 sur le site du projet de nouvelle
centrale nucléaire de Darlington (PNCND)

**Commission Public Hearing
Part-2**

**Audience publique de la Commission
Partie-2**

January 8, 2024

8 janvier 2024



Saugeen Ojibway Nation

**Request to Intervene and Written Submission in
Ontario Power Generation's application for a Licence to Construct the
Darlington New Nuclear Power Project**

November 12, 2024

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I. Request to Intervene

Pursuant to rule 19 of the *Canadian Nuclear Safety Commission Rules of Procedure*,¹ the Saugeen Ojibway Nation (“SON”) requests the opportunity to intervene in Part 2 of the public hearing on Ontario Power Generation’s (“OPG”) application for a Licence to Construct (“LTC”) one GE Hitachi Boiling Water Reactor (“BWRX-300”) at the Darlington New Nuclear Project (“DNNP” or “Project”) site through written and oral submissions.

II. Contact Information

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III. Overview

The purpose of this document is to provide an overview of SON’s written submissions to the Canadian Nuclear Safety Commission (the “Commission”) as part of its application to intervene.

1. Saugeen Ojibway Nation

SON is comprised of the Anishinaabe People of the Chippewas of Nawash Unceded First Nation and Chippewas of Saugeen First Nation. SON’s Territory, Anishinaabekiing, encompasses much of the Saugeen (or Bruce) Peninsula, extending down south of Goderich and east of Collingwood. The waters surrounding these lands and the lakebed of Lake Huron from the shore to the international boundary with the United States and to halfway across Georgian Bay are also part of SON’s Territory.

SON’s ancestors have used and occupied Anishinaabekiing since time immemorial and its People continue to do so today. Anishinaabekiing consists of everything integral to life—

¹ *Canadian Nuclear Safety Commission Rules of Procedure*, [SOR/2000-211](#).

the lands, rivers, lakes, winds, plants, people, animals, and fish. Anishinaabekiing has sustained the SON People physically and spiritually for countless generations and must continue to do so far into the future.

2. Nuclearization of Anishinaabekiing

The development of the nuclear industry in Anishinaabekiing has played a major role in shaping the land and the SON People's place within it. Without consultation or consent, SON became host to:

- Canada's first commercial-scale Canada Deuterium Uranium ("CANDU") reactor at Douglas Point;
- One of the world's largest operating nuclear facilities at the Bruce site;
- The vast majority of Ontario's low and intermediate-level waste ("L&ILW") at the Western Waste Management Facility ("WWMF");
- Western Clean-Energy Sorting and Recycling Facility ("WCSR Facility"); and
- 1,444,935 used CANDU fuel bundles (approximately 27,500 tonnes of nuclear waste), representing nearly 45 percent of Canada's used fuel.²

OPG has been transporting nuclear waste to SON Territory without SON consent for 45 years. This infringement of SON rights is compounded daily as OPG continues to make approximately 700 shipments of nuclear waste annually to SON Territory.³

Anishinaabekiing is currently being considered by the Nuclear Waste Management Organization ("NWMO") as one of two potential sites for Canada's deep geological repository ("DGR"). SON is being asked to accept all 6 million used fuel bundles to be produced by the current fleet of reactors for permanent disposal. Following the Minister of Natural Resources Canada's ("NRCan") acceptance of the NWMO's recommendation that intermediate-level waste also be disposed of in a DGR, the scope of the project SON is being asked to host is likely to expand significantly.⁴ Moreover, the planned development and deployment of small modular reactors ("SMRs") will require OPG and the NWMO to plan

² Nuclear Waste Management Organization, [Nuclear Fuel Waste Projections in Canada – 2023 Update](#) at 4.

³ Letter from Laurie Swami (Senior Vice President, Decommissioning and Nuclear Waste Management, Ontario Power Generation) to Marc Leblanc (Commission Secretary, Canadian Nuclear Safety Commission) (May 16, 2016), [Application for Renewal of Western Waste Management Facility Operating Licence](#) at PDF 20, section 1.3.2.

⁴ Nuclear Waste Management Organization, "Integrated Strategy for Radioactive Waste" (June 2023), <https://www.nwmo.ca/ISRW> ("Integrated Strategy for Radioactive Waste").

for disposal of entirely new waste streams. Similar to ILW, SON will face pressure to accept nuclear waste from SMRs for interim storage and final disposal.⁵

SON People and Territory will inexorably be at the heart of all future nuclear developments in Canada. For SON, the legacy of the nuclear industry is one of exclusion and is marred by the systematic denial of SON's rights and interests. The DNNP must not contribute to these injustices.

IV. Comments and Concerns

SON leadership, staff, and subject-matter experts have completed a review and analysis of the LTC application and submit the following comments and concerns. During previous phases of the DNNP's assessment and licensing processes, SON raised various matters of concern. SON's submissions regarding the LTC application are focused the issue of radioactive wastes.

1. Overview of the Assessment and Licensing Process

OPG submitted an initial and updated Licence to Prepare Site in 2006 and 2009, respectively, for the construction of up to four Class 1 nuclear power generating facilities at the DNNP site. OPG used a Plant Parameter Envelope to encompass the range of reactor technologies under consideration. The Joint Review Panel ("JRP") that was appointed to undertake an environmental assessment ("EA") of the Project issued its Report in 2011 ("JRP Report"). The Government of Canada ("Canada") issued its response to the JRP Report in 2012 ("Canada's Response"), after which OPG was issued a Licence to Prepare Site.

Following its selection of a reactor technology in 2021, namely the BWRX-300, OPG filed its LTC application. Pursuant to one of the JRP's recommendations, this prompted a review of the applicability of the conclusions of the EA to the chosen reactor technology. As the Commission determined that the EA is applicable to the BWRX-300, OPG's LTC application is now being considered.

SON has participated in every stage of this process and has remained clear on its position throughout. If the DNNP is approved, the radioactive waste it produces must not be transported to or stored in SON Territory without SON consent. OPG cannot continue to presume the availability of WWMF to store its L&ILW or rely on it as a backup plan. The DNNP represents an entirely new waste stream and potentially a new era of nuclear development. The injustices of the past decisions cannot be the grounds for justifying injustices into the future.

⁵ Integrated Strategy for Radioactive Waste.

a) Joint Review Panel

At the earliest stages of this assessment and licensing process for the DNNP, important accommodations were made to SON. Specifically, the JRP included two recommendations in its report regarding the storage of radioactive waste. These recommendations, which were the result of SON's written and oral submissions during the JRP hearings, are as follows:

Recommendation #52:

The Panel recommends that *prior to construction*, the Canadian Nuclear Safety Commission require OPG to make provisions for on-site storage of all used fuel for the duration of the Project, in the event that a suitable off-site solution for the long-term management for used fuel waste is not found.

Recommendation #53:

The Panel recommends that *prior to construction*, the Canadian Nuclear Safety Commission require OPG to make provisions for on-site storage of all of low and intermediate-level radioactive waste for the duration of the Project, in the event that a suitable off-site solution for the long-term management for this waste is not approved.⁶

The JRP also noted that "OPG confirmed that there would be sufficient space on the Project site to *permanently store all of the radioactive waste* from the Project. The Panel is of the view that this should be a requirement of the Project."⁷

b) Canada's Response

In 2012, Canada accepted the intent of these two recommendations in its response. Canada's responses are as follows:

Recommendation 52 ...

Response

The Government of Canada accepts the intent of this recommendation to the extent that it is the responsibility of waste owners for managing and funding the safe and secure operation of their own wastes. Canada's *1996 Radioactive Waste Policy Framework* states that the owners of radioactive waste are

⁶ Joint Review Panel, Environmental Assessment Report on the Darlington Nuclear Power Plant Project (August 2011) at 118, <https://iaac-aeic.gc.ca/archives/evaluations/29525/documents/55381/55381E.pdf> ("JRP Report") [emphasis added].

⁷ JRP Report at 118 [emphasis added].

responsible for developing and implementing solutions, including all costs associated with safely and securely managing their wastes.

Recommendation 53 ...

Response

The Government of Canada accepts the intent of this recommendation to the extent that it is the responsibility of waste owners for managing and funding the safe and secure operation of their own wastes, in accordance with CNSC's regulatory requirements. Canada's 1996 *Radioactive Waste Policy Framework* states that the owners of radioactive waste are responsible for developing and implementing solutions, including all costs associated with safely and securely managing their wastes.⁸

While Canada's Response might allow space for some operational flexibility for how it will be implemented, the JRP's recommendations *must* be implemented in a way that achieves the intention of the section. Specifically, it must be ensured that the waste is not sent off site to SON Territory without SON acceptance of that plan. Furthermore, the decision cannot be put off—provisions must be made now for its storage on site. To allow OPG to do otherwise is not only inconsistent with the conditions of the Project, but it also has the potential to allow OPG to manufacture a crisis that will again look to SON Territory for its solution.

c) *Commission Record of Decision of applicability of EA*

Although SON is disappointed that the Commission did not heed SON's concerns regarding the implications of the DNNP as the first grid scale SMR in North America and continues to fear that the repercussions of this development are not well-understood, the Commission did recognize the accommodations made to SON regarding waste. In the "Record of Decision DEC 24-H2, Determination of Applicability of Darlington New Nuclear Project Environmental Assessment to OPG's Chosen Reactor Technology" ("Commission EA Decision"), the Commission quotes Recommendations #52 and #53 of the JRP Report and recognizes that "OPG is required to make provisions for on-site storage of all nuclear waste

⁸ Government of Canada, Response to the Joint Review Panel Report for the Proposed Darlington New Nuclear Power Plant Project in Clarington Ontario (Archived) at 47-48, https://iaac-aeic.gc.ca/archives/evaluations/29525/document-html-eng_did=55542.html ("Canada's Response") [emphasis added].

for the duration of the Project.”⁹ Furthermore, these recommendations are being traced as part of OPG’s DNNP Commitments Report.¹⁰

d) *Commitments regarding storage of radioactive waste*

OPG has thus far failed to meet the express requirements of the JRP Report, Canada’s Response, and the Commission EA Decision. OPG appears unwilling to acknowledge that on-site storage of radioactive waste is a condition of the DNNP. That the Canadian Nuclear Safety Commission (“CNSC”) staff are enabling OPG’s failure to address this critical issue is of significant concern to SON.

In its 2022 LTC application, for example, OPG states that L&ILW “will be transported to a licensed waste management facility for interim storage followed by long-term management/disposal.”¹¹ In OPG’s more recent written submissions made as part of these proceedings, it explains that from its perspective it has two options for interim storage of L&ILW as bounded by the EA, either “the construction of onsite licensed storage structures” or the “off-site transportation to a licensed facility.”¹²

Although OPG contends it has the option to ship the waste to a licensed facility, it explains that “[s]ubject to further necessary regulatory authorizations from the Commission, OPG intends to proceed with interim storage of L&ILW onsite at a licensed facility.”¹³ Already OPG is laying the groundwork for failing to meet this basic condition by highlighting the uncertain outcomes of future regulatory decisions. This distortion of the licensing processes is dishonourable and cannot be allowed and yet the CNSC seems to be enabling this situation. Specifically, the CNSC notes that if OPG proposes “the construction of a radioactive waste storage facility on the DNNP site in future, a separate application and subsequent licensing decision will be required.”¹⁴ Given that OPG has indicated it intends to

⁹ Canadian Nuclear Safety Commission, Record of Decision DEC 24-H2, Determination of Applicability of Darlington New Nuclear Project Environmental Assessment to OPG’s Chosen Reactor Technology (April 19, 2024) at para 230, <https://www.opg.com/documents/cnsc-record-of-decision-dnnp-chosen-reactor-technology-pdf/> (“Commission EA Decision”).

¹⁰ Commission EA Decision at 73.

¹¹ Ontario Power Generation, Darlington New Nuclear Project: Application for a Licence to Construct a Reactor Facility (October 2022) at 252, <https://www.opg.com/documents/dnnp-application-for-a-licence-to-construct-a-reactor-facility-pdf/> (“OPG DNNP Application”).

¹² Ontario Power Generation, Written Submission, Application for a licence to construct one BWRX-300 reactor at the Darlington New Nuclear Project Site (DNNP) (October 2, 2024) at 103 (“OPG Written Submissions”).

¹³ OPG Written Submissions at 103.

¹⁴ CNSC staff, Application for a Licence to Construct a BWRX-300 Reactor at the Darlington New Nuclear Project Site (DNNP), CMD 24-H3 (June 28, 2024) at 14 (“CMD”); Draft Supplemental submission by CNSC for Part 2 of hearing on Licence to Construct (nd) (“CMD Draft Supplementary Submissions”).

apply for a Licence to Operate as early as 2026, it is unclear when and how the waste issue will be resolved within that timeframe.¹⁵

e) Radioactive Waste Management Plan

In addition to failing to recognize that L&ILW must be stored on site, OPG has failed to uphold its commitment to provide its Radioactive Waste Management Plan as part of the DNNP LTC application. In its 2022 LTC Application Plan, OPG explains that it “will develop a Radioactive Waste Management Plan and provide it to the CNSC as part of the LTC application. OPG will provide the strategy for storage of used fuel, and low and intermediate level waste.”¹⁶ This was included among its list of commitments.

Although OPG asserts in its written submissions that “information is provided for how these wastes will be managed and stored through the lifecycle of the BWRX-300 at the DNNP site,”¹⁷ almost no details are provided and only vague references to plans are mentioned.

The CNSC staff recognize this and explain that OPG has “not formalized their plans for waste management related to the DNNP,”¹⁸ nor has OPG “yet made a decision about where waste generated by the DNNP will be stored, should it proceed.”¹⁹ On-site storage of the radioactive waste is and has always been a fundamental part of the DNNP. Failing to provide waste management plans as part of the LTC application does not exempt OPG from this fact.

The CNSC explains that, although there are no waste plans in place, “OPG has extensive operational experience in the handling, processing, shipping, and storage of hazardous materials across multiple licences covering a variety of regulated activities.”²⁰ These assurances are of no comfort to SON as this “extensive operational experience” is largely based upon its ongoing operations in, and exploitation of, SON Territory. Further, this experience does not solve the problem being created at the DNNP site.

f) Separate licensing phases

The CNSC staff’s position is that the radioactive waste storage problem can be solved at a later date. As the construction of the facility does not produce radioactive waste, there is no urgency to addressing the issue. Specifically, the CNSC says the need to resolve the

¹⁵ CMD at 14.

¹⁶ Ontario Power Generation, Darlington New Nuclear Project Licence to Construct Application Plan (May 27, 2022) at s 5.26 (“OPG Application Plan”).

¹⁷ OPG Written Submissions at s 4.11; see also OPG DNNP Application at s 4.11.1.

¹⁸ CMD Draft Supplementary Submissions at s 2.1 shared with SON on October 28, 2024.

¹⁹ CMD, “CNSC staff’s Indigenous Consultation Report for the Darlington New Nuclear Project Licence to Construct Application” at 61 (CMD PDF 768) (“Indigenous Consultation Report”).

²⁰ CMD at 139.

radioactive waste management issue “is not within the scope of the decision to be made by the Commission regarding at [sic] the Licence to Construct application.”²¹

The CNSC staff provide assurances that OPG will meet the regulatory requirements for waste management *once* an LTC has been issued. The waste management concerns are to be addressed during the “Licence to Operate phase of the DNNP, as OPG is required to submit additional information.”²² At that point,

OPG will be required to update its BWRX-300 waste management plan ... to reflect further information on waste streams generated and projected future waste volumes as they become available. CNSC staff will continue to review these plans throughout the construction phase to verify compliance with these regulatory requirements. OPG has committed to provide this information for CNSC staff review as it becomes available.²³

The proposition that ‘its premature to plan for waste storage’ is absurd given the level of infrastructure development that occurs at site during the site preparation and construction phases. OPG explains, for example, that the infrastructure in place for the *four* reactor units are on track to be constructed on time, including with respect to:

Installation of permanent services (domestic water, fire water, communications, construction power); the onshore and offshore geotechnical investigation; the excavation and the backfill to the [sic] allowed grade elevation for Unit 1; most of the excavation, backfill, and compacting work for several support buildings, such as ... parking lots, laydown areas, roads, and temporary construction offices.²⁴

For the LTC, the requested licensed activities include, among other things:

the construction of one BWRX-300 power block, which includes the structures, systems, and components associated with the reactor building, control building, turbine building, radioactive waste building, and auxiliaries; the construction of the support structures for up to four BWRX-300 units; the inspection and testing of equipment.²⁵

It is incongruous that OPG is preparing to construct the support structures for up to four BWRX-300 units despite the LTC application being for only one unit, and yet it is too early to answer basic questions regarding the storage of radioactive waste.

²¹ Indigenous Consultation Report at 61 (CMD PDF 768).

²² Indigenous Consultation Report at 62 (CMD PDF 769).

²³ CMD at 140.

²⁴ CNSC, Public Hearing Transcripts (October 2, 2024) at 26 (“Hearing Transcripts”).

²⁵ Hearing Transcripts at 27.

As there is no easy solution to the radioactive waste problem, the CNSC staff are recommending that OPG be allowed to advance in the licensing process without making real plans or developing concrete solutions. Most importantly, by not planning for an acceptable waste solution now, OPG is being permitted to exacerbate the nuclear waste problem which could put continued pressure on the SON Territory to provide a solution. The nuclear industry has time and time again exhibited that it is path dependent and that the path leads to SON. These are precisely the concerns raised by SON during the EA for which the JRP provided accommodations. Still, the CNSC ignores this reality and seems determined to repeat the mistakes of its past.

g) Processing of radioactive waste

In its written submissions on the LTC application, OPG explains that L&ILW “will be processed off-site by a vendor, which has not been decided. Overall, OPG will be working to reduce the amount of nuclear waste it produces based on proven practices undertaken at the Western Waste Site.”²⁶ The site to which OPG is referring, is the WCSR Facility that was opened in SON Territory in 2023.

In light of this new centralized OPG facility, it is worth noting that SON’s position on keeping the DNNP’s waste out of SON Territory includes for the purposes of sorting, processing, recycling, and reducing. Committing to return the reduced waste to the DNNP site after incineration, for example, would not meet the spirit of the JRP recommendations. SON will not accept the transportation of waste from DNNP to its Territory without SON consenting to the plan.

Accordingly, reference to this requirement should also be included as a condition of the licence to ensure there is clarity on the issue.

h) Disposal solution

SON’s submissions in these proceedings are focused on the interim storage of L&ILW. This is because the interim storage of spent fuel must remain on site until it can be disposed of in a DGR. It bears noting, however, that SON is deeply troubled by the cavalier way in which the radioactive waste disposal problem is discussed.

OPG asserts that Canada’s Adaptive Phased Management (“APM”) plan for the long-term management of spent nuclear fuel “has always been adaptive so that flexibility is built into repository design to accommodate changes in technology.”²⁷ OPG claims that the NWMO’s DGR “can accommodate the long-term storage of the BWRX-300 spent fuel.”²⁸ As a contingency, the “NWMO is also exploring the potential to include any future used fuel from

²⁶ OPG, Darlington New Nuclear Project Indigenous Engagement Report: November 2023 to May 2024 at 19 (OPG Written Submissions at PDF 165).

²⁷ OPG Written Submissions at 104.

²⁸ OPG Written Submissions at 104.

SMRs and new nuclear in the same repository that will manage the intermediate-level waste.”²⁹

OPG’s reliance on the APM process as a final disposal solution for radioactive wastes, including SMR wastes from the DNNP, is unfounded. The APM is a process, not a solution. The impact assessment process of the proposed spent fuel DGR and the site selection process of the proposed ILW DGR have yet to even begin. No final disposal solution for any type of radioactive waste exists in this country at this time. The proposition that the introduction of a new stream of lightly enriched uranium should not be a matter of concern is absurd. The continued reliance on future solutions is not a sound planning practice, and to seek to dismiss concerns to that regard is shameful.

i) Requested Commission determination

If the Commission approves the LTC, SON submits that the licence must include as a condition that this facility can only be constructed if the waste is to remain on site for the life cycle of the DNNP and permanently if no disposal solution is found. The existing provision regarding waste in the CNSC staff’s draft LTC (PRCL 32.00/2035) is wholly inadequate. Specifically, it says:

11.1 The licensee shall implement and maintain a waste management program.³⁰

SON requests that the Commission amend the licence as follows:

11.1 The licensee shall implement and maintain a waste management program to store all the radioactive waste on site throughout the life cycle of the nuclear facility and permanently if no disposal solution is found. This requirement applies with respect to the sorting, processing, recycling, and reducing of radioactive wastes.

Although the CNSC staff may suggest that such specificity with respect to the storage of radioactive waste should not be included in the LTC, the *Nuclear Safety and Control Act* provides that a “licence may contain any term or condition that the Commission considers necessary for the purposes of this Act.”³¹ Not only would the inclusion of this language be consistent with the commitments made throughout this process, but it would also enable the CNSC to demonstrate the fulfillment of the duty to consult and accommodate with respect to SON.

²⁹ OPG Written Submissions at 104.

³⁰ Nuclear Power Reactor Site Preparation Licence: OPG New Nuclear at Darlington Generating Station PRSL 18.00/2031 at 3 (CMD PDF 407).

³¹ *Nuclear Safety and Control Act*, SC 1997, c 9 at [s 24\(5\)](#).

2. Indigenous Consultation and Accommodation

The CNSC staff assert that the duty to consult has been met because SON's questions and concerns "have been adequately addressed, responded to and discussed to the extent possible within the CNSC's mandate and regulatory requirements at the Licence to Construct stage of the DNNP."³²

This statement can only be true if conditions requiring the DNNP waste to remain outside of SON Territory are included in the LTC. If these conditions are *not* included in the LTC, then SON submits that the duty to consult and accommodate has not been discharged. The following is an overview of why the Crown's obligations have not been met if the Commission does not include the accommodations for SON in the LTC.

a) Duty to consult and accommodate

The Supreme Court of Canada explains that the "content of the duty, once triggered, falls along a spectrum ranging from limited to deep consultation, depending upon the strength of the Aboriginal claim, and the seriousness of the potential impact on the right."³³ For the purposes of the LTC application, the CNSC does not recognize SON as an impacted Indigenous Nation at all. The CNSC has repeatedly stated that SON is not among the list of "Rights holders", nor is it a "potentially impacted Indigenous Nation."³⁴ Rather, SON is understood to merely be an Indigenous Nation that has "expressed an interest in the DNNP."³⁵ If SON is not recognized as a potentially impacted Indigenous Nation, then it is unclear against what standard the CNSC is measuring the fulfillment of the duty to consult and accommodate.

The CNSC's position that the Crown's obligations have been met only holds if it believes that DNNP waste will not be transported to, stored in, or disposed of in SON Territory and that conditions to this effect, as described above, are included in the LTC, if issued. The CNSC's position, however, actually appears to be that the waste issue will be addressed at a future date, during the Licence to Operate phase. Using licensing phases to artificially narrow the scope of the duty to consult and exclude recognition of potential impacts to SON is dishonourable. This strategy cannot be used to delay the recognition and implementation of the accommodations already made to SON.

The CNSC explains that "issues and concerns have been raised that go beyond the scope of the DNNP Licence to Construct application. For example, some concerns regarding waste management will be in scope during the Licence to Operate phase, should the DNNP proceed."³⁶ That the "CNSC staff remain committed to working with the Indigenous Nations

³² Indigenous Consultation Report at 62 (CMD PDF 769).

³³ *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, 2017 SCC 40 at [para 20](#).

³⁴ See for example Indigenous Consultation Report at 7 (CMD PDF 714).

³⁵ See for example Indigenous Consultation Report at 7 (CMD PDF 714).

³⁶ Indigenous Consultation Report at 11 (CMD PDF 718).

and communities to address these concerns throughout the lifecycle of the DNNP, should it proceed”³⁷ provides no comfort to SON. The CNSC’s willingness to recognize that “there is an overlap between the licensing phases and activities authorised by a licence, enabling a fluid transition between successive phases,”³⁸ is at odds with its rigid compartmentalization of when Indigenous concerns need to be addressed.

The CNSC’s position has had detrimental effects on the consultation process. Ensuring that consultation feels meaningful to Indigenous Peoples in the face of powerful, well-resourced industries backed by governmental policies and financial support is always a challenge. Being told that the regulator does not recognize your Nation as being potentially impacted and that the concerns your Nation has expressed can be addressed at a later stage—after the Project has been approved for construction—completely undermines the sense that the consultation process is meaningful.

The CNSC’s position on the waste issue has the potential to cause real impacts. If the CNSC does not understand that the LTC could impact SON’s rights and interests at this stage, then it will not recognize the need to accommodate them. The concern is that the CNSC’s own actions in failing to ensure OPG provides a proper waste storage plan will effectively increase the odds that SON *will* become an impacted Indigenous Nation. The longer the CNSC fails to acknowledge and resolve the waste issue, the more likely the CNSC is to help create a looming crisis in which storage options are reduced and the threat of OPG transporting its waste to SON Territory becomes a real possibility. In this way, the CNSC’s actions themselves contribute to the threats and impacts to SON rights.

The JRP’s inclusion of recommendations designed to accommodate SON at the earliest stages of this process demonstrates the absurdity of the CNSC’s position that the question of waste management planning can only be addressed at the Licence to Operate phase. These accommodations should be honoured and upheld at every stage of the process without SON having to continue to intervene throughout.

SON leadership, staff, and membership are required to devote a disproportionate amount of their time, energy, and resources to addressing nuclear issues rather than their own community priorities. This is the result of an unjust history over which SON had no control. Given this difficult history, the CNSC should never use project scoping and compartmentalization of licensing processes as strategies to deny proper consultation and accommodation to SON.

b) *United Nations Declaration on the Rights of Indigenous Peoples*

The CNSC explains that its approach to consultation and engagement is guided not just by the duty to consult and accommodate, but also by the “*United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA); and the Government of Canada’s commitment to

³⁷ Indigenous Consultation Report at 11 (CMD PDF 718).

³⁸ CMD at 10.

Reconciliation.”³⁹ According to the CNSC, it has “considered changes that have occurred in the approach to consultation for the DNNP licence to construct application since the EA.”⁴⁰ The Commission similarly has recognized that “consultation and engagement requirements and expectations have evolved since the EA was conducted.”⁴¹

How these new developments have changed and enhanced the CNSC’s consultation practices is unclear to SON. Real and meaningful accommodations were made to SON as part of the EA process in 2011—accommodations that SON is now struggling to have the CNSC and OPG honour and implement.

Comments from the CNSC explaining that it is “waiting for further clarity from Natural Resources Canada on next steps for implementation”⁴² do not bode well for the effective implementation of UNDA. Nor do references to Canada’s position that the UNDA “itself does not immediately change Canada’s existing duty to consult Indigenous groups.”⁴³ The UNDA is clear: “Nothing in this Act is to be construed as delaying the application of the Declaration in Canadian law.”⁴⁴ The Supreme Court of Canada has confirmed it is part of Canada’s positive law.⁴⁵

The rights recognized in UNDRIP represent a “minimum standard,”⁴⁶ which Canada has committed to implementing “without qualification.”⁴⁷ NRCan seems to be under the impression that it can now circumscribe, restrict, or simply deny these rights through policies and guidelines. As a Court of Record, the Commission must be proactive about ensuring the UNDA is implemented meaningfully. It must not fall into the trap of believing that Canada can commit to upholding these rights on the international stage and take the necessary domestic action to fulfill those promises, only to undercut their implementation on the ground thereafter.

³⁹ CMD at 158; see also Hearing Transcripts at 76.

⁴⁰ CMD at 158.

⁴¹ Commission EA Decision at para 218.

⁴² CNSC response to MSIFN’s August 24th Email regarding DNNP waste management consent at 2 (CMD at PDF 902).

⁴³ Commission EA Decision at para 224.

⁴⁴ *United Nation Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c14 at [s 2\(3\)](#).

⁴⁵ Reference re *An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 at para 15.

⁴⁶ *United Nations Declaration on the Rights of Indigenous Peoples* ([A/RES/61/295](#)) at Art 43 (“UNDRIP”).

⁴⁷ C. Bennet, *Speech delivered at the United Nations Permanent Forum on Indigenous issues, New York, May 10, 2016* ([Online](#)).

c) Free, prior and informed consent

Following in Canada's steps, the Commission has thus far focused discussions regarding free, prior and informed consent ("FPIC") on Article 32 of UNDRIP, which Canada explains as:

processes that are free from manipulation or coercion, informed by adequate and timely information, and occur sufficiently prior to a decision so that Indigenous rights and interests can be incorporated or addressed effectively as part of the decision-making process – all as part of meaningfully aiming to secure the consent of affected Indigenous peoples.⁴⁸

When it comes to the storage and disposal of hazardous materials,⁴⁹ NRCAN has yet to acknowledge that Canada's commitment goes beyond "aiming to secure" consent. The CNSC, for its part, has further downgraded the FPIC commitments by explaining it is "striving to achieve *consensus* with potentially impacted Indigenous Nations and communities."⁵⁰

The UNDA must be applied meaningfully in CNSC's licensing processes. This means that the CNSC cannot continue to hide behind the compartmentalization of the DNNP licensing process. FPIC must be taken seriously, and not be considered as an afterthought. "Striving to achieve consensus" with Indigenous Peoples is meaningless if the project moves forward unimpeded if consensus is not reached in the regulator's allotted timeframe, or at all.

The application of FPIC regarding hazardous wastes cannot be limited to the spent fuel DGR. All radioactive waste is hazardous waste and all Indigenous Peoples on whose lands the nuclear industry operates or intends to operate are entitled to the right of FPIC. The licensing process should never be used to undermine the right of FPIC through the regulator allowing the proponent to significantly advance the development of the project without first securing FPIC.

V. Conclusion

SON has participated at every stage of the assessment and licensing process for the DNNP. Important accommodations were secured regarding the storage of radioactive waste at the beginning of this process as a result of SON's submissions to the JRP. The statements in the Commission EA Decision regarding the applicability of the EA demonstrate a commitment to honouring the conditions upon which the DNNP was allowed to proceed. The submissions from the CNSC and OPG regarding the LTC, however, are clearly seeking to undermine and delay the upholding of these commitments.

⁴⁸ Commission EA Decision at para 228 [emphasis added].

⁴⁹ UNDRIP at Art 29(2).

⁵⁰ Indigenous Consultation Report at 132 (CMD PDF 839) [emphasis added].

SON submits that these significant issues cannot be postponed to a future date, once the DNNP has been approved for construction. If the Commission fails to uphold these commitments by issuing the LTC without including the necessary conditions, it will have contributed to the manufacturing of a new radioactive waste crisis that could again look to SON Territory for its solution.