



Oral presentation

Written submission from the Mississaugas of Scugog Island First Nation

In the Matter of the

Ontario Power Generation Inc.

Application to extend the operation of
Pickering Nuclear Generating Station
Units 5 to 8 until December 31, 2026

Commission Public Hearing

June 2024

Exposé oral

Mémoire de la Première Nation des Mississaugas de Scugog Island

À l'égard d'

Ontario Power Generation Inc.

Demande visant à prolonger l'exploitation
des tranches 5 à 8 de la centrale nucléaire de
Pickering jusqu'au 31 décembre 2026

Audience publique de la Commission

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Intervenor Submission: Ontario Power Generation (OPG)-Pickering Nuclear Generating Station (PNGS)

Application for authorization to operate Pickering Nuclear
Generating Station Units 5 to 8 until 2026



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Mississaugas of Scugog Island First Nation
Consultation Office

April 29, 2024



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To the attention of:

The Canadian Nuclear Safety Commission (CNSC)

Via email: interventions@cnscccsn.gc.ca

Re: Ontario Power Generation's application for authorization to operate Pickering Nuclear Generating Station Units 5 to 8 until 2026

Thank you for the opportunity to comment on OPG's Operating License Amendment Application for the Pickering Nuclear Generating Station to operate Power Reactor Units 5 to 8 until December 31, 2026.

Comments on behalf of the Mississaugas of Scugog Island First Nation are below.

1.0 Introduction

The Mississaugas of Scugog Island First Nation (MSIFN) is located on the shores of Lake Scugog in the Region of Durham, Ontario. MSIFN, alongside the other Michi Saagiig and Chippewa First Nations, collectively form the Williams Treaties First Nations (WTFNs). Within these Treaty territories, MSIFN places utmost importance on protecting the lands, waters, wildlife, and fisheries vital to our livelihood, along with ensuring community safety.

The Pickering Nuclear Generating Station (PNGS) is situated within the territory covered by the Gunshot Treaty and the Williams Treaties of 1923, having treaty rights reaffirmed in 2018, granting MSIFN a rights-holding position in the PNGS project. MSIFN's reserve community is located just 41 km from the PNGS, and members have concerns and uncertainties regarding the safety, management, and security of the nuclear reactors and waste stored onsite, as well as potential ongoing environmental impacts. MSIFN is within the 50 km Ingestion Planning Zone (IPZ) designated by the Canadian Nuclear Safety Commission (CNSC), and Potassium Iodide (KI) pills have been pre-distributed to the community in preparation for a nuclear emergency. MSIFN must endure these risks without ever having provided consent to the project, and with no option to relocate our treaty lands to mitigate these risks to community safety and treaty rights. MSIFN emphasizes the imperative for the CNSC and OPG to prioritize the safety of MSIFN community members and uphold treaty rights.



2.0 Background

Ontario Power Generation is seeking approval from the Canadian Nuclear Safety Commission to extend the operation of Pickering Nuclear Generating Station Units 5 to 8 until December 31, 2026. The extension requires an amendment to the current operating license, which allows commercial operation of all reactor units until December 2024. OPG is also making a request to revise the operating limit for the pressure tubes in Units 5 to 8 up to 305,000 equivalent full-power hours (EFPH).

OPG asserts that Pickering NGS will remain fit for service with supporting evidence and plans to continue meeting legal requirements under the Nuclear Safety and Control Act and associated regulations. OPG's application includes commitments to ensuring nuclear safety, mitigating environmental and societal impacts, Indigenous engagement, and investing in Pickering's infrastructure to enhance safety and reliability.

MSIFN has reviewed the following documents pertaining to the authorization request: OPG's initial submission (CMD 24-H5.1), OPG's supplementary submission (CMD 24-H5.1A), and the CNSC's submission (CMD: 24-H5). Below are the key concerns identified.

3.0 Key Concerns with Application

3.1 Safety

Nuclear safety is paramount to MSIFN. Nearly every aspect of the nuclear fuel lifecycle occurs within our territory, except for uranium mining. These activities, which did not exist before colonization, have and will continue to impact our community. The responsibility of the CNSC and OPG to ensure the safety of our community members must not be taken lightly.

3.1.1 Emergency Planning

MSIFN is the only First Nation community located within the 50 km Ingestion Planning Zone (IPZ) for distribution of potassium iodide (KI) pills in the event of an emergency at the Pickering Nuclear Generating Station. The application submitted by OPG (CMD 24-H5.1) mentions the IPZ, affirming OPG's continued active participation in the CNSC-led Potassium Iodide Working Group (KIWG). A Phase I report was created which clarifies current plans and the responsible parties involved in distributing potassium iodide pills within the 50km IPZ for Pickering NGS.



MSIFN learned about the IPZ through the CNSC but was not invited to collaborate on the Phase I report or join the KI Working Group. As the only First Nation situated within the IPZ, MSIFN strongly asserts that OPG and the CNSC could have made greater efforts to consult with and engage our Nation in the planning of this crucial initiative, which has the potential to affect community safety and rights.

OPG's submission (CMD 24-H5.1) also references the Provincial Nuclear Emergency Response Plan (PNERP). In May 2022, OPG and Emergency Management Ontario (EMO) renewed their agreement for five years to support EMO in planning and executing the PNERP. The agreement provides expertise in emergency planning, drills, and nuclear education and emergency preparedness materials. EMO is updating the PNERP, with public consultation currently ongoing to finalize it.

MSIFN initially became aware of the PNERP in 2022 through the province. We have been progressively engaging in the process as the plan approaches its finalization, with an initial target for completion by 2023. While we acknowledge the province's willingness to collaborate, we are disappointed by OPG's failure to engage or consult with our Nation earlier in the planning process. OPG should have ensured MSIFN's involvement in planning much earlier, particularly considering their awareness of the timelines for finalizing the plan. Considering the significance of emergency management, especially with OPG's extension request, MSIFN should have been involved earlier. OPG should not solely depend on the province to engage in emergency planning for its facilities. MSIFN is now in a position where leadership meetings and community consultations for the PNERP must be accelerated, whereas collaboration with OPG on this initiative could have begun at least a year earlier during regular meetings and engagement. Emergency planning deserves increased attention and proactive engagement from all parties involved.

3.1.2 Fitness for Service

Along with the application to operate PNGS Units 5 to 8 until 2026, OPG has requested that the CNSC approve a new license limit for operation of the pressure tubes up to 305,000 equivalent full-power hours (EFPH) for Pickering NGS Unit 6. The projected EFPH for each unit is expected to be as follows: Unit 5 - 297,500, Unit 6 - 305,000, Unit 7 - 298,000, and Unit 8 - 283,000.

According to OPG's submission (CMD 24-H5.1), a program to monitor the strength properties of Inconel X-750 spacers resulted in the removal of a fuel channel from PNGS Unit 8 in 2021. The spacers in Unit 8 have the longest operating period among Units 5 to 8 at Pickering NGS. Various tests including visual examination, hardness, crush/strength, and fatigue testing were conducted. Based on the test results, it was demonstrated that **the fitness for service of all spacers in Units 5**



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to 8 at Pickering NGS is confirmed up to 264,000 Equivalent Full Power Hours (EFPH). From the information provided, MSIFN is concerned that PNGS Units 5 to 8 have not undergone testing or confirmation for the proposed new limit of 305,000 EFPH.

Furthermore, the CNSC's website addresses concerns regarding elevated hydrogen equivalent concentration in pressure tubes operating beyond 210,000 EFPH¹. On July 13, 2021, the CNSC issued formal notices to all nuclear power plant licensees in Canada, requesting further analysis on the continued safe operation of pressure tubes. This action was prompted by Bruce Power's discovery of elevated hydrogen equivalent concentration in the pressure tubes of two units. It is noted that this discovery only affected reactors with pressure tubes operating beyond 210,000 EFPH.

Given OPG's request for a new license limit to operate the pressure tubes at PNGS up to 305,000 EFPH, significantly exceeding the 210,000 EFPH noted above, ensuring the control of hydrogen equivalent concentrations and mitigating risks to pressure tubes is paramount.

From CMD 24-H5.1, OPG will ensure the fitness for service of Fuel Channels by:

- Updating the Fuel Channels Pressure Tubes Periodic Inspection Plan (PIP) for Pickering 5-8 to reflect an extended operating period up to the end of 2026.
- Establishing the basis for continued demonstration of fitness for service of fuel channels for Pickering NGS Units 5 to 8 for the extended operating period up to the end of 2026. Fitness for service of fuel channels includes demonstration of sufficient margin on the FFS limits of the pressure tubes, calandria tubes and garter springs (annulus spacers) during the continued operational life of the plant.
- Conducting research, development, and testing on pressure tubes to understand degradation, along with inspection and surveillance to monitor for progression of degradation.

MSIFN is concerned that the Periodic Inspection Plan and other OPG mitigation methods will not outweigh the risks of operating pressure tubes beyond their service limits. The failure of even a single tube could potentially damage the calandria which encases all of the pressure tubes, leading to significant damage and potential reactor shutdown.

¹ CNSC, "Pressure Tubes," Canadian Nuclear Safety Commission, accessed April 24, 2024, <https://www.cnsccsn.gc.ca/eng/resources/fact-sheets/pressure-tubes/>



An article in the *Globe and Mail*² discusses how nuclear reactor pressure tubes are deteriorating faster than expected and Canadian utilities are being allowed to operate tubes beyond licensing limits. 2021 inspections revealed that pressure tubes in reactors at the Bruce Nuclear Generating Station deteriorated at a faster rate than anticipated, violating operating license terms. This underscores challenges faced by all aging reactors, as more than 50% of Canada's CANDU reactors have exceeded their original 30-year design lives. Documents obtained under the Access to Information Act revealed flexibility in regulatory limits to facilitate continued operation of aging reactors, noting that in some cases established limits were disregarded by the Commission. Despite the risks involved, the CNSC is considering the approval of continued operation of PNGS for a duration of up to two years, along with a new license limit for operating the pressure tubes up to 305,000 EFPH.

We would like to officially state that MSIFN is not comfortable with the risk management methods being employed by the CNSC and OPG. Pickering Nuclear Generating Station is Canada's oldest operating nuclear plant, and OPG has made the request to change the standards to a less safe level as part of continued operation. If the regulator accepts OPG's request, they must be ready to justify all safety standards and provide robust monitoring and emergency plans to MSIFN and other interested WTFNs. At a minimum, the CNSC should require that all pressure tubes be inspected to ensure fitness for service ahead of granting OPG's request.

3.1.3 Security

With regard to security arrangements, MSIFN supports Bill C-21's proposed security-related changes to the *Nuclear Safety and Control Act* to give security personnel the authority to carry out limited peace officer function at nuclear facilities. We request that OPG and the CNSC comment on their positions on this provision in Bill C-21 with respect to OPG's application for authorization to operate Pickering Nuclear Generating Station Units 5 to 8 until 2026, and provide further comment on how the adoption of this provision may impact – positively or negatively – security with respect to this application.

² The *Globe and Mail*, "Nuclear Reactor Pressure Tubes Deteriorating Faster Than Expected, Critics Warn Regulators Are 'Breaking Their Own Rules'," accessed on April 24, 2024, <https://www.theglobeandmail.com/canada/article-canada-nuclear-power-plants-candu-tubes/>.



3.1.4 Collaborative Planning

Overall, we request that OPG and the CNSC engage in activities that embody a collaborative planning approach with MSIFN and other interested Williams Treaties First Nations concerning all aspects of safety and emergency response planning. Such a process would ensure that interested First Nations are kept informed about operations and issue management at the PNGS, and are invited to collaborate on initiatives such as community-specific plans or emergency response working groups. This is critically important to our Nation and the safety and rights of the MSIFN community.

Our understanding of collaborative planning is rooted in the International Association for Public Participation’s (IAP2) spectrum of public participation (see figure below). Collaborative planning requires OPG to partner with MSIFN in each aspect of its decision-making process for major projects and the operation of major facilities, including the development of alternatives and the preferred solutions. Collaborative planning also means OPG looking to MSIFN for advice and innovation in formulating solutions, and incorporating MSIFN’s advice and recommendations into its decisions to the maximum extent possible. OPG has demonstrated, on occasion, that it is interested in true collaborative planning with MSIFN, and needs to enshrine such collaborative planning in its corporate policies.

IAP2
spectrum

developed by the international association for public participation

	INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
PUBLIC PARTICIPATION GOAL	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives and/or solutions.	To obtain public feedback on analysis, alternatives and/or decision.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision-making in the hands of the public.
PROMISE TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.



3.2 Rights, UNDRIP, and Consent

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 PNGS. In parallel, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) plays a pivotal role.

3.2.1 Implementation of UNDRIP and Action Measure #34 under the Nuclear Safety and Control Act

The application of the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) is now considered by the Supreme Court of Canada (SCC) to be “domestic positive law” in Canada. As such, the CNSC must consider UNDRIP and its provision for “free, prior and informed consent” (FPIC) in interpreting section 35(1), especially in light of the recent adoption of the *UNDRIP Act, 2021* (UNDA). UNDA has introduced new legal perspectives, marking a significant evolution in Aboriginal law in Canada. Specifically, it underscores the recognition of Indigenous peoples as sovereign entities, thereby shaping their legal and constitutional landscape. In essence, this means that UNDRIP is now part of Canadian law, applicable to federal, provincial, and territorial law.

The CNSC has yet to embrace and incorporate UNDRIP and FPIC in its policies and regulations, despite the SCC interpreting the *UNDRIP Act* as recognizing UNDRIP as a pre-existing set of rights that must continue to animate Canadian law. The CNSC must now officially recognize and respond accordingly to the SCC’s interpretation of UNDA as recognizing UNDRIP as a pre-existing set of rights. MSIFN understands that the CNSC is involved in broader efforts by the Government of Canada to continue advancing implementation of the UN Declaration, including through the efforts to implement UNDA and the 2023 – 2028 Federal UNDA Action Plan. MSIFN is concerned that current and near future CNSC decisions including this decision on the license extension application for Pickering NGS should be, but may not be, informed by the SCC’s position on UNDRIP as “domestic positive law”.

MSIFN understands that the CNSC is committed to working in consultation and cooperation with Indigenous communities, including MSIFN, and relevant Federal departments and agencies to support the implementation of measures in the UNDA Action Plan that intersect with the CNSC’s mandate, including measures that relate to further guidance on the Federal Government’s approach to Free, Prior, and Informed Consent (FPIC). We understand that CNSC staff look forward to continuing discussions regarding the UNDA Action Plan and UNDRIP implementation as part of



the CNSC's policies, regulatory framework and practices. However, these activities should not prevent the CNSC from applying UNDRIP to current and future decisions.

Considering this, in conjunction with the SCC's comments on UNDRIP, MSIFN would like to bring to the CNSC's attention Action Measure #34, including the steps to achieve the objectives of the measure^{3,4}. Action Measure #34 states that the Canada Energy Regulator (CER) will "work in consultation and cooperation with First Nations, Métis and Inuit communities, governments and organizations to (i) enhance the participation of Indigenous peoples in, and (ii) set the measures that could enable them to exercise federal regulatory authority in respect of, projects and matters that are currently regulated by the Canada Energy Regulator."

To achieve these objectives, UNDA tasks the CER and Natural Resources Canada (NRCan) to complete the following:

- Develop regulations respecting the Minister of Natural Resources Canada's power to enter into arrangements that would enable Indigenous governing bodies to be authorized to exercise specific powers, duties and functions under the Canadian Energy Regulator Act.
- Amend the Canadian Energy Regulator Onshore Pipeline Regulations and Filing Manuals applicable to the lifecycle (design, construction, operation and abandonment) of CER-regulated infrastructure, in a manner that:
 - o "Incorporates specific localized knowledge held by Indigenous peoples, as well as Indigenous laws, policies, practices, protocols, and knowledge."
 - o "Strengthens measures to prevent and address impacts to Indigenous rights and interests, including in relation to heritage resources and sites of Indigenous significance."
- Develop a systemic model to enhance Indigenous peoples' involvement in compliance and oversight over the lifecycle (design, construction, operation and abandonment) of CER-regulated infrastructure. The model should integrate learnings from existing structures and relationships.
- Consult and cooperate to identify and take the measures needed to support Indigenous governing bodies, and/or the potential establishment of new Indigenous decision-making

³ OKT Law, 2024, UNDRIP is now part of Canada's "domestic positive law". What does this mean? - <https://www.oktlaw.com/undrip-is-now-part-of-canadas-domestic-positive-law-what-does-this-mean/>

⁴ Canada Energy Regulator, 2023. "Walking the Talk Toward Reconciliation," accessed on April 24, 2024, from <https://www.cer-rec.gc.ca/en/about/news-room/feature-articles/2023/collaboration-co-development-walking-talk-toward->



institutions, to exercise regulatory authority on projects and matters regulated by the Canada Energy Regulator, including:

- “Co-develop with First Nation, Métis and Inuit communities, governments and organizations and relevant federal department and regulators the mandate of such bodies or institutions, as well as the mechanisms required for empowering them with certain regulatory authorities.”
- “Identify the actions and allocate the resources required to further develop capacity and expertise for the exercise of regulatory authority by such bodies or institutions.”
- “This work could lead to other federal departments, regulators or institutions, similarly working in consultation and cooperation with First Nations, Métis and Inuit communities, governments and organizations, to:
 - “Enhance the participation of Indigenous peoples.”
 - “Set the measures that could enable them to exercise regulatory authority, in respect of federally regulated natural resource projects.”

MSIFN asserts that the above referenced work of Action Measure #34 could lead regulators, such as the CNSC, to work now in consultation and cooperation with Indigenous communities, governments and organizations, to (i) enhance the participation of Indigenous peoples, and (ii) set the measures that could enable Indigenous governing bodies to exercise regulatory authority under the *Nuclear Safety and Control Act*, in respect of federally regulated nuclear energy projects, including the development, production and use of nuclear energy and the production, possession and use of nuclear substances.

Action Measure #34 is a fitting model that could be molded swiftly under the *Nuclear Safety and Control Act*, given that the Minister of Natural Resources administers the Act in question. Additionally, NRCan is responsible for implementing UNDA measures, including Action Measure #34, and can work with other regulators, such as the CNSC, to enable Indigenous governing bodies to exercise regulatory authority. MSIFN asserts that Action Measure #34 is a fitting model that could be molded under the *Nuclear Safety and Control Act*, given that the Commission has existing powers to (i) enter into arrangements, (ii) establish advisory, standing and other committees, and (iii) certify persons to carry out duties under the *Nuclear Safety and Control Act*. Furthermore, the Commission has the authority to issue, renew, suspend in whole or in part, amend, revoke, replace or redetermine a licence to carry out any activity described in the *Nuclear Safety and Control Act*. Consequently, MSIFN affirms that our ability to exercise regulatory authority, understanding the Minister’s and Commission’s powers and abilities, can meaningfully shape the



outcome of regulatory proceedings and establish new consultation standards exceeding those identified in REGDOC 3.2.2 Indigenous Engagement.

Separately, MSIFN understands that the provisions enacted by the *Nuclear Safety and Control Act* are to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the Constitution Act, 1982. In 2018, the recognition of pre-existing treaty and harvesting rights of the Williams Treaties First Nations, including MSIFN, were affirmed by the Government of Canada through the WTFN Settlement Agreement. The Settlement Agreement underscores the recognition of inherent, Aboriginal and Treaty Rights within MSIFN's Treaty and Traditional territory thereby reshaping MSIFN's legal and constitutional position in Canada. MSIFN's Treaty and Traditional territory encompasses numerous nuclear facilities and nuclear waste facilities. Additionally, MSIFN's Treaty and Traditional territory features major waterbodies and waterways, including Lake Ontario and the Trent Severn, as well as linear transportation routes, including and the CN Rail and Highway 401 (which is actively used to transport nuclear waste).

MSIFN asserts that our ability to exercise regulatory authority under the *Nuclear Safety and Control Act*, in conjunction with the Federal government, will enhance participation in the regulatory process. This will respect MSIFN's rights, including our right to self-determination and self-government, and considerably advance legal pluralism, including honouring and recognizing the spirit of the Treaties. Additionally, the ability to exercise regulatory authority under the Nuclear Safety and Control Act, in conjunction with the Federal government, will considerably advance other UNDA measures, including Action Measure #32.

Considering all of the above, MSIFN requests that CNSC staff immediately initiate Action Measure #34 specific discussions with MSIFN and other interested Indigenous communities, understanding that the CNSC is committed to working in consultation and cooperation with Indigenous partners, including MSIFN, and relevant Federal departments and agencies to support the implementation of measures in the UNDA Action Plan that intersect with the CNSC's mandate. Furthermore, MSIFN requests that CNSC staff initiate discussion with the Treasure Board of Canada Secretariat, given that they oversee the Cabinet Directive on Regulations and set out the expectations and requirements for the development, management, and review of federal regulations.

3.2.2 Consent

It is imperative to acknowledge that MSIFN and other Williams Treaties First Nations were never consulted by the Crown or facility operators during the initial decision-making processes for the establishment and operation of the PNGS, the Pickering Waste Management Facility (PWMF), or



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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 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. Nevertheless, the ongoing absence of mention regarding free, prior and informed consent for project activities is notable within the CNSC's submission (CMD: 24-H5), OPG's submission (CMD 24-H5.1), and OPG's supplementary submission (CMD 24-H5.1A) despite MSIFN having raised this request on several occasions.

MSIFN understands that the PNGS has been operating since 1971 within our treaty area, without seeking consent for ongoing operations, creation of new structures on site, or changes to the project and/or its lifecycle. For reasons noted above, we strongly urge the Commission to make it mandatory for OPG to secure the consent of MSIFN and other WTFNs before approving any licensing changes associated with the PNGS. 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.

3.3 Nuclear Waste

The proposed license extension for the PNGS would result in the generation of more solid radioactive waste than initially anticipated. This is because Units 5 to 8 would continue to operate until 2026 instead of being decommissioned. Again, it should be emphasized that MSIFN never provided consent to the Pickering Nuclear Generating Station, Pickering Waste Management Facility, or future on-site storage of nuclear waste at the Pickering site. We are now faced with the associated risks. There is still no established long-term plan for managing and storing used nuclear fuel in Canada. Given the risks associated with the storage of radioactive waste in the Treaty Territory, possibly indefinitely, MSIFN underscores the necessity of securing consent. MSIFN suggests that a First Nation consent provision should be formulated and enforced by the Commission for the management of nuclear waste at the PNGS site.

We are aware that OPG has submitted a Letter of Intent to the CNSC for a license amendment to construct a new storage facility, the Pickering Component Storage Structure (PCSS), at the



Pickering Waste Management Facility site. OPG indicates that additional interim storage space is needed to support the refurbishment of Pickering NGS Units 5 through 8 and decommissioning activities.

MSIFN is concerned that OPG is making plans for additional nuclear waste storage structures for refurbishment activities without having received approval from the CNSC to continue operating Units 5 to 8 until 2026, or receiving approval for refurbishing units at the Pickering NGS. Additionally, MSIFN was not consulted regarding this new structure before OPG submitted the letter of intent, which was sent to the CNSC on February 1st, 2024. MSIFN only learned about the plans for a new structure at Pickering during a March 20th, 2024 OPG “Pickering Kickoff Meeting” with WTFNs, and was informed about the actual letter of intent and its submission during an April 9th, 2024, meeting with the CNSC. The requirement for additional waste storage at the Pickering site is absent in CMD 24-H5.1 Section 6.11 – Waste Management. The lack of Indigenous engagement, consultation and collaboration from both OPG and CNSC staff for additional nuclear waste storage facilities should be of urgent concern to the Commission.

MSIFN strongly urges the Commission to consider establishing a provision for First Nation consent, to be enforced by the Commission itself, regarding the management of nuclear waste at the PNGS/PWMF sites. Furthermore, MSIFN emphasizes the necessity of drafting and implementing a binding provision that not only protects the environment but also upholds the rights of First Nations, particularly concerning the management of nuclear waste at the Pickering Nuclear site. These matters should be thoroughly assessed and addressed through meaningful collaboration between OPG and concerned WTFNs, recognizing them as the primary rights holders of the lands and waters of the Pickering site. It is crucial to remind the Commission that MSIFN has never granted consent for storing any on-site waste at the Pickering site.

3.4 Environmental Risk Assessment

OPG’s submission (CMD 24-H5.1) states that “Pickering NGS has an Environmental Risk Assessment (ERA) which evaluated and confirmed that the risk to human and ecological receptors from exposure to contaminants and physical stressors related to the Pickering NGS and its activities is very low. In addition, a 2022 Predictive Effects Assessment (PEA) Addendum was prepared to demonstrate that human health and the environment will continue to be protected during the transition of the station from operation to a safe storage state, based on updated baseline environmental conditions and continued operations assumed until 2026. These studies



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support the conclusion that the environmental protection in the vicinity of the Pickering NGS will be maintained.”

MSIFN conducted a review of the 2022 Environmental Risk Assessment for Pickering Nuclear, as well as the Predictive Effects Assessment for Pickering Safe Storage. Comments were provided to OPG on October 11th, 2023, and MSIFN did not receive a response to concerns until March 27th, 2024 – over 5 months later. These comments were also used to form the basis of MSIFN’s intervenor submission to the CNSC on the Mid-term Update for OPG’s Pickering Nuclear Generating Station in October 2023.

A significant concern is that MSIFN was not engaged in the assessment of the original baseline aquatic conditions for the Pickering NGS. This is despite evidence of First Nation historic use of the site area between Frenchman’s Bay and the Duffins Creek Marsh to east of the Darlington NGS for time immemorial. In the absence of MSIFN and other First Nations contributing to assessments of environmental baseline conditions, there is no way for OPG to conclude that current and historic operations of the Pickering NGS have not created human health or environmental risks from exposure to radiological contaminants, conventional contaminants, and physical stressors present in the environment as a result of over fifty years of site operations.

Moving forward, MSIFN expects to be consulted during the development of new ERAs for the PNGS. OPG must adopt a more collaborative approach in drafting Risk Assessments which considers First Nation specific risk factors and concerns, including baseline data.

3.5 Consultation

CMD 24-H5.1 indicates that “OPG is committed to engaging with Indigenous Nations and communities regarding nuclear operations and future projects. OPG’s Indigenous Relations Policy provides a framework for engaging with Indigenous peoples and providing support for community programs and initiatives while respecting Aboriginal and Treaty rights which are recognized and affirmed under s.35 of Constitution Act, 1982.”

OPG’s submission also states that “continued operation of Pickering NGS does not create any new adverse impacts on Aboriginal and/or treaty rights held by local Indigenous Nations and communities but **does extend the known impacts** and the ongoing mitigation efforts and OPG continues to engage with the local Indigenous Nations and communities to ensure awareness of impacts to rights. Further, OPG is committed, through this process, to meaningful engagement, building awareness of Indigenous perspectives and knowledge, and fulfilling the procedural aspects of the Duty to Consult while acknowledging the industry’s legacy of the lack of meaningful engagement and consultation.”



OPG indicates that engagement on Pickering NGS operations is focused on the Williams Treaties First Nations in whose treaty and traditional territory Pickering NGS is located, and that discussions were held with MSIFN on the plans for Pickering NGS with respect to the late-2022 announcement to seek CNSC authorization to operate Pickering NGS Units 5 to 8 to December 2026 and to conduct a feasibility study on potential refurbishment. OPG claims that in-depth discussions were had with the WTFNs in advance of the announcement to ensure they were informed ahead of time. The fact that OPG and MSIFN entered into a Framework Agreement in the fall of 2022 is also mentioned.

Despite what is written in OPG's submission (CMD 24-H5.1), MSIFN does not believe that we have been meaningfully consulted about the PNGS life extension application, nor about other ongoing and planned activities on the Pickering site. There is currently no Pickering specific agreement or relationship in place between MSIFN and OPG. There are no recurring meetings set up to discuss the PNGS, and one of the first all-WTFNs meetings on the project was the Pickering Kickoff Meeting on March 20th, 2024. In comparison to the relationship MSIFN has with OPG around the Darlington New Nuclear Project (DNNP), consultation specific to the Pickering Nuclear Generating Station has been minimal. Additionally, MSIFN would like to state for the record that the referenced Framework Agreement is not a project-specific agreement. It is a broad relationship agreement with OPG involving quarterly meetings where updates are shared from OPG on all projects, including nuclear, hydroelectric, and partnerships, not specific to Pickering NGS.

MSIFN also wishes to highlight concerns regarding the piecemeal process through which the Commission regulates and manages project proceedings, resulting in a disjointed consultation process for numerous regulated facilities. For example, we anticipate several hearings, reviews, and submissions related to Pickering NGS in the coming year alone, with likely more as PNGS progresses towards either decommissioning or refurbishing its remaining reactors. This fragmented approach burdens First Nation communities and does not allow for fulsome understanding or meaningful consultation, as it fails to adopt a holistic perspective or consider the project's cumulative effects. We've requested OPG's assistance in understanding this process by providing a regulatory roadmap for Pickering Nuclear, a request that remains pending.

4.0 Conclusion

4.1 Requests for Accommodation

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



- 1. OPG and the CNSC engage in a collaborative planning approach with MSIFN concerning safety and emergency response planning.**
 - OPG and the CNSC should engage in activities that embody a collaborative planning approach with MSIFN and other interested Williams Treaties First Nations concerning all aspects of safety and emergency response planning.
 - This would ensure that interested First Nations are kept informed about operations at the PNGS and are invited to collaborate on initiatives such as community-specific plans or emergency response working groups.

- 2. CNSC require OPG to obtain consent from MSIFN and other WTFN for changes to the PNGS and PWWF projects, prior to issuing license amendments or approvals.**
 - MSIFN never provided consent to the Pickering Nuclear Generating Station, Pickering Waste Management Facility, or future on-site storage of nuclear waste at the Pickering site.
 - We urge the Commission to make it mandatory for OPG to secure the consent of MSIFN and other WTFNs prior to approving any licensing changes associated with the PNGS. 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.

- 3. CNSC staff immediately initiate Action Measure #34 specific discussions with MSIFN and other interested Indigenous communities.**
 - Action Measure #34 is a fitting model that could be molded under the *Nuclear Safety and Control Act*, given that the Commission has existing powers to enter into arrangements, establish advisory, standing and other committees, and certify persons to carry out duties under the *Nuclear Safety and Control Act*.
 - MSIFN requests that CNSC staff initiate Action Measure #34 specific discussions with MSIFN and other interested Indigenous communities.
 - We also request that CNSC staff initiate discussion with the Treasure Board of Canada Secretariat, given that they oversee the Cabinet Directive on Regulations and set out the expectations and requirements for the development, management, and review of federal regulations.

- 4. CNSC require OPG to consult and collaborate with MSIFN on the development of new ERAs for the Pickering NGS.**



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- MSIFN expects to be consulted during the development of new ERAs for the PNGS.
 - OPG must adopt a more collaborative approach in drafting Risk Assessments which considers First Nation specific risk factors and concerns, including baseline data.
- 5. CNSC require OPG to provide MSIFN with a regulatory roadmap for the Pickering NGS**
- MSIFN anticipates several hearings, reviews, and submissions related to Pickering NGS in the coming year, with likely more as PNGS progresses towards either decommissioning or refurbishing its remaining reactors.
 - This fragmented approach burdens First Nation communities and does not allow for fulsome understanding or meaningful consultation, as it fails to adopt a holistic perspective or consider the project's cumulative effects.
 - We request OPG's assistance in understanding this process by providing a regulatory roadmap for all Crown approvals for the future of the Pickering Nuclear Generating Station.

In addition to the above requests, MSIFN also asks that the CNSC acknowledge the following accommodations previously requested, specific to the DNNP project. MSIFN wishes for these requests to apply to both Pickering and Darlington sites:

1. OPG formally commits to supporting MSIFN's leadership for a review of International Best Practices for the management and storage of used nuclear fuel at reactor sites.
2. OPG provides greater clarity and a comprehensive consultation and collaborative decision-making plan for nuclear waste generated at its facilities.
3. OPG collaboratively work toward the implementation of a Cumulative Effects Assessment that encompasses all facilities within the WTFNs Treaty Territory.

MSIFN is committed to ensuring the CNSC and OPG advance the PNGS project in the right way. At the forefront of this should be the rights and consent of impacted First Nations, protection of the environment and human health 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.

Sincerely,

MSIFN Consultation Office

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