



**Written submission from the
Saugeen Ojibway Nation**

**Mémoire de la
Nation Saugeen Ojibway**

In the Matter of the

À l'égard d'

Ontario Power Generation Inc.

Ontario Power Generation Inc.

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

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

Commission Public Hearing

Audience publique de la Commission

June 2024

Juin 2024



Saugeen Ojibway Nation

Written Submissions and Request to Intervene

Ontario Power Generation's request for amendment to Pickering Nuclear Generating Station Power Reactor Operating Licence, PROL 48.01/2028 for authorization to operate Units 5 to 8 beyond December 31, 2024

May 3, 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 the public hearing on the extension of the operation of Pickering Nuclear Generating Station (“NGS”) Units 5 to 8 until December 31, 2026, through written submissions. The SON has both an interest in the matter being heard and information that may be useful to the Canadian Nuclear Safety Commission (“Commission”) in coming to a decision.

II. Contact Information

SON can be contacted through its Environment Office as well as its legal counsel at:

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III. Overview of Applicant

The purpose of this document is to provide an overview of SON’s written submissions to 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. Anishinaabeking, SON’s Traditional and Treaty Territory, encompasses much of the Saugeen (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.

¹ SOR/2000-211.

SON's ancestors have used and occupied Anishinaabekiing since time immemorial and its People continue to do so today. SON Territory consists of everything integral to life—the lands, rivers, lakes, winds, plants, animals, and fish. Anishinaabekiing has sustained 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 SON Territory has played a major role in shaping the land and the SON People's place within it.² Without consultation or consent, SON became host to:

- Canada's first commercial-scale Canada Deuterium Uranium ("CANDU") reactor at Douglas Point;
- the world's largest operating nuclear facility at the Bruce site;
- the vast majority of Ontario's low and intermediate level waste ("L&ILW") at the Western Waste Management Facility ("WWMF");
- the Western Clean-Energy Sorting and Recycling 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.³

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 per year to SON Territory.⁴

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 5.6 million used fuel bundles for permanent disposal to be produced by the current fleet of reactors.⁵ Following the Minister of Natural Resources Canada's acceptance of the NWMO's recommendation that ILW also be disposed of in a DGR, the scope of the project SON is being asked to host is likely to expand significantly.⁶

² The history and current reality of the nuclear industry in SON Territory has been described in various previous SON submissions relating, for example, to the licensing of the Western Waste Management Facility and the Joint Review Panel for Ontario Power Generation's deep geological repository for low and intermediate level wastes proposal.

³ Nuclear Waste Management Organization, [Nuclear Fuel Waste Projections in Canada – 2023 Update](#), page 4.

⁴ Letter from Lauri 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](#), page 20, section 1.3.2.

⁵ Thomas Reilly, Nuclear Waste Management Organization, [Nuclear Fuel Waste Projections in Canada – 2023 Update](#) (2023) at page 6 [*Nuclear Fuel Waste Projections*].

⁶ Nuclear Waste Management Organization, "Integrated Strategy for Radioactive Waste" (June 2023), available online: <https://www.nwmo.ca/ISRW>.

Moreover, the planned development and deployment of small modular reactors (“SMRs”) would require OPG and the NWMO to plan for disposal of entirely new waste streams. The NWMO estimates that the three SMR projects currently undergoing regulatory reviews could result in an additional 510,000 equivalent CANDU fuel bundles.⁷ Similar to ILW, SON will face pressure to accept nuclear waste from SMRs for interim storage and final disposal.

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.

IV. Proposed amendment to Pickering Operating Licence

In 2018, OPG was granted a 10-year Power Reactor Operating Licence (“PROL”) for Pickering NGS from August 31, 2018, to August 31, 2028. The PROL includes operations to the end of 2024, followed by nuclear waste storage activities until 2028. On June 16, 2023, as required by the PROL, OPG submitted a licence amendment application to the Commission which requests authorization to operate Pickering NGS Units 5 to 8 to the end of December 2026.

V. Comments and Concerns

SON staff and subject-matter experts completed an initial review and analysis of the licence amendment application and submit the following comments and concerns regarding the impacts on SON’s rights and interests.

1. No consultation or consent for waste management, storage, and disposal

As described above, SON’s concern regarding the operation of Pickering NGS Units 5 to 8 beyond December 31, 2024, is the waste management, storage, and disposal issue. SON was not consulted about this project extension, nor was any effort made to seek SON’s free, prior, and informed consent regarding the storage of the resulting hazardous materials in Anishinaabekiing. In fact, OPG’s application to the Commission fails to consider or reference the transportation of waste to the WWMF and fails to consider SON’s interests regarding the storage and disposal of nuclear waste in SON Territory. And yet section (IV)(vii) of the PROL lists the transportation, management, and storage of nuclear substances at the WWMF as a licenced activity. As a result, the PROL amendment would authorize additional impacts in SON Territory.

OPG reports that in “addition to in-depth discussions, personal phone calls were made to the Chiefs of the WTFN and the Saugeen Ojibway Nation in advance of the announcement

⁷ *Nuclear Waste Fuel Projections*, *supra* note 5 at page 8.

[to seek to amend the PROL] to ensure they were informed ahead of time”.⁸ It is unclear to what OPG is referring to. A review of OPG’s consultation reporting reveals a stark contrast between its engagement efforts with the Indigenous groups located in the vicinity of the Pickering NGS and SON. This is the symptom of a much larger problem, namely OPG’s denial of the impacts caused by its continued transportation to and storage in SON Territory of radioactive waste from its facilities. OPG cannot continue to exploit decisions and authorizations made decades ago without SON consultation or consent.

2. *Need to address historical and ongoing issues before new waste considered*

SON has made it clear that it will not accept the continued importation of radioactive wastes into its Territory from new, expanded, or extended operations without evidence that OPG is prepared to meaningfully address the historical and ongoing impacts from its existing operations. SON will provide written submissions regarding appropriate licence conditions and other necessary accommodations to be included to protect SON rights should the application to amend Pickering’s PROL be granted.

3. *Commission’s commitment to reconciliation*

As an agent of the Crown, the SON look to the Commission to ensure Canada’s commitments to reconciliation with Indigenous peoples as they relate to the regulation of the nuclear industry are upheld. The landscape of reconciliation has fundamentally shifted in recent years. In 2016, Canada announced its “unqualified support”⁹ of the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”), an international human rights instrument which sets out “the minimum standards for the survival, dignity and well-being of Indigenous peoples.”¹⁰ In 2021, Canada enacted the *United Nations Declaration on the Rights of Indigenous Peoples Act* (“UNDRIP Act”), which affirmed UNDRIP as a universal human rights instrument with application in Canadian law.¹¹ The *UNDRIP Act* recognizes that Indigenous Peoples have suffered “injustices as a result of, among other things, colonization and dispossession of their lands, territories and resources”.¹²

In February 2024, the Supreme Court of Canada in the *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families* unanimously stated the *UNDRIP Act*

⁸ Ontario Power Generation, *Pickering Nuclear Generating Station Power Reactor Operating Licence Amendment Application*.

⁹ Government of Canada, “Canada Becomes a full supporter of the United Nations Declaration on the Rights of Indigenous Peoples”, New Release (May 10, 2016), available online: <https://www.canada.ca/en/indigenous-northern-affairs/news/2016/05/canada-becomes-a-full-supporter-of-the-united-nations-declaration-on-the-rights-of-indigenous-peoples.html>.

¹⁰ United Nations (General Assembly), *Declaration on the Rights of Indigenous Peoples* (2007) at Preamble. Emphasis added.

¹¹ *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, s 4(a).

¹² *Ibid* at Preamble.

operated to incorporate UNDRIP into the domestic positive law of Canada.¹³ This declaration was restated by the majority of the Supreme Court of Canada in its March 2024 judgment in *Dickson v Vuntut Gwitchin First Nation*.¹⁴

Article 29 of UNDRIP provides:

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 29 of UNDRIP is nothing short of a necessary precondition for the very survival of SON and its People. In particular, Article 29(2) of UNDRIP is one of the strongest and clearest free, prior, and informed consent provisions within UNDRIP.

As an agent of the Crown and a court of record with the power to determine questions of fact and law,¹⁵ the Commission has the obligations of the State to ensure that no storage or disposal of hazardous materials shall take place in SON Territory without SON's free, prior, and informed consent. The Commission must be directed by the adoption of UNDRIP into Canadian law and the subsequent jurisprudence of the Supreme Court of Canada recognizing these commitments.

The CNSC has anticipated changes in Canada's approach to the duty to consult, Aboriginal engagement, and case law, and has committed to act on such changes. CNSC REGDOC-3.2.2 states:

As Canada's approach to the duty to consult and Aboriginal engagement continues to evolve, along with the respective case law, the CNSC will review and update REGDOC-3.2.2 to reflect new and updated requirements and best practices, as needed.

The recent Supreme Court of Canada's jurisprudence represents a significant evolution in Aboriginal engagement case law. Beyond the application at hand, the CNSC must take the required steps to update its regulatory documentation and internal procedures to wholly

¹³ *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 at para 15.

¹⁴ *Dickson v Vuntut Gwitchin First Nation*, 2024 SCC 10 at para 117.

¹⁵ *Nuclear Safety and Control Act*, SC 1997, c 9, s 20(1).

account for this new legal landscape and the Commission must factor these developments into its decision-making process.

In the *Principles respecting the Government of Canada's relationship with Indigenous Peoples*, Canada recognized that "reconciliation is a fundamental purpose of section 35 of the *Constitution Act, 1982*."¹⁶ As an agent of the Crown, the CNSC must act to further the Government of Canada's constitutional commitment to reconciliation by adopting a forward-looking, reconciliation-first approach, grounded firmly in the implementation of UNDRIP and the *UNDRIP Act*.

VI. Conclusion

For over 60 years, without consent, SON has been at the heart of the development of the nuclear industry in this country. Through the storage and disposal of nuclear waste at the WWMF, OPG and the Pickering NGS are inextricably tied to SON Territory and the rights of SON within its Territory. A Pickering NGS PROL extension threatens to further complicate and compound this bad history. Longstanding historical and ongoing issues remain unresolved. Understood in this context, it becomes clear that any decision the Commission makes regarding Pickering NGS Units 5 to 8 stands to impact SON's rights, interests, and future by continuing to allow an ever-increasing volume of nuclear waste to be stored and disposed of in SON Territory. OPG cannot continue to assume that future wastes from its new, expanded, and extended projects will be stored on SON Territory without meaningful consultation or consent.

The legal landscape has undergone a significant shift. Recent federal legislation and Supreme Court of Canada jurisprudence represent a significant evolution in the protection of Indigenous rights. Significant focus must now be placed on the need for consent. OPG cannot indefinitely continue to exploit decisions and authorizations made decades ago without SON consultation or consent. SON will provide written submissions regarding appropriate licence conditions and other necessary accommodations to be included to protect SON rights should the application to amend Pickering's PROL be granted.

¹⁶ Government of Canada, "Principles respecting the Government of Canada's relationship with Indigenous Peoples" (2018), available online: <https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>.