



Supplementary Information

Written submission from the Saugeen Ojibway 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

Renseignements supplémentaires

Mémoire de la Nation Saugeen Ojibway

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

Juin 2024



Saugeen Ojibway Nation

Supplemental Written Submissions

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 21, 2024

The Saugeen Ojibway Nation (SON) provides the following supplemental submissions regarding the proposed amendment to the Pickering Nuclear Generating Station's (NGS) operating licence. SON's original submissions focused largely on Ontario Power Generation's (OPG) ongoing failure to engage with SON about proposed activities that impact SON rights, including the licensing matter under review. In these supplemental submissions, SON focuses on the Canadian Nuclear Safety Commission's (CNSC) obligations regarding the duty to consult and accommodate.

As an agent of the Government of Canada, the CNSC has responsibility for fulfilling the Crown's duty to consult obligations in nuclear regulatory matters. This involves upholding the honour of the Crown in all licensing decisions under the *Nuclear Safety and Control Act*.¹ Part of this responsibility involves directing licensees in the carrying out of certain procedural aspects of engagement with Indigenous groups on proposed projects.

In the case of the life extension of the Pickering NGS, the CNSC did not identify SON as an affected Indigenous Nation. In fact, the CNSC's Commission Member Document regarding this proposed licence amendment does not mention SON at all.² This approach is consistent with other projects located outside of SON Territory, such as the proposed Darlington New Nuclear Project (DNNP) and the amendment to the Darlington operating licence to produce Cobalt-60. Only those communities with asserted or recognized rights in the vicinity of the project are recognized as potentially affected. That the radioactive waste flowing from these licenced activities is destined invariably for SON Territory is not considered a project impact that triggers consultation with SON.

The compartmentalization of projects in this way is unacceptable. It undermines the credibility of the regulatory assessment process by isolating from decision-making a critical impact from projects—the management of radioactive waste. Further, it frustrates consultation and inadvertently supports OPG's continued exploitation of unconscionable decisions and authorizations made decades ago without SON consultation or consent. These historic decisions are not past grievances—they represent ongoing and compounding harms. SON's ability to avoid having its Territory designated as the default nuclear waste dumping ground forever is undermined with every additional truckload of waste entering the Territory. Consequently, regulatory decisions such as the Pickering NGS life extension proposal may have very real and significant downstream impacts.

Until such time that alternative storage and disposal facilities are established elsewhere, activities at Pickering and Darlington are *always* connected to SON Territory. The CNSC and

¹ *Nuclear Safety and Control Act, SC 1997, c9*. See also Canadian Nuclear Safety Commission, *Policy Statement: CNSC's Commitment to Indigenous Consultation and Engagement* (Policy Statement), online: <<https://www.cnscccsn.gc.ca/eng/resources/aboriginal-consultation/indigenous-policy-statement/>>.

² CMD 24-H5, Submission from CNSC, Application to extend the operation of Pickering Nuclear Generating Station Units 5 to 8 until December 31, 2026.

the Commission must recognize the full scope of project impacts and that SON's rights are *always* at stake in OPG's nuclear activities.

To date, neither the CNSC nor the Commission have clearly articulated their understanding of the implications of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) on the nuclear regulatory process. What is clear, however, is that Canada's commitment to implement UNDRIP and its adoption of the *United Nations Declaration on the Rights of Indigenous Peoples Act*³ cannot be meaningless. Business as usual is not acceptable. The gap between the current practice of failing to recognize the storage of hazardous waste as a project impact, and the commitment to uphold the right to free, prior, and informed consent regarding the storage of hazardous waste is incongruous. At a minimum, article 29(2) of UNDRIP requires the CNSC to recognize that every licence amendment leading to additional waste in SON Territory impacts SON rights.

The CNSC is charged with creating a preliminary list of Indigenous groups that may have an interest in activities described in the licence application that are then shared with the licensee.⁴ The CNSC encourages Indigenous peoples to outline the "nature and scope of their Indigenous interests that they feel may be affected by a proposed project or activity regulated by the CNSC."⁵ Moving forward, SON must be noted as an affected Indigenous Nation whenever a licensing process may result in additional radioactive waste being transported to and stored in SON Territory.

The CNSC's consultation policy is informed by the federal *Aboriginal Consultation and Accommodation* guidelines.⁶ These guidelines explain that:

The overall relationship between the Crown and an Aboriginal group will influence, and be influenced, by how consultation and accommodation issues are being addressed by each department and agency. Managers must keep an eye on the "big picture" as their department's handling of a consultation file may strengthen or weaken Canada's relationship with a particular First nation, Métis or Inuit group, thereby influencing not only their own department's or agency's future dealings with that community, but also the future dealings of other departments and agencies.⁷

³ *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c14.

⁴ Canadian Nuclear Safety Commission, *Indigenous engagement*, REGDOC 3.2.2, Version 1.2 (February 2022) at 4.4 and 5, online: <<https://www.cnsccsn.gc.ca/eng/acts-and-regulations/regulatory-documents/published/html/regdoc3-2-2-v1-2/>>.

⁵ *Policy Statement: CNSC's Commitment to Indigenous Consultation and Engagement* (Policy Statement), online: <<https://www.cnsccsn.gc.ca/eng/resources/aboriginal-consultation/indigenous-policy-statement/>>.

⁶ Government of Canada, *Aboriginal Consultation and Accommodation: Updated Guidelines for Federal Officials to Fulfill the Duty to Consult*, March 2011, online: <<https://www.rcaanc-cirnac.gc.ca/eng/1100100014664/1609421824729>> (*Aboriginal Consultation and Accommodation Guidelines*).

⁷ *Aboriginal Consultation and Accommodation Guidelines* at (PDF) 21.

Significant work must be done to address the history and ongoing impacts faced by SON from the nuclearization of its Territory. A proper scoping of project impacts through nuclear regulatory processes is an essential first step. The regulatory process can no longer divorce nuclear generation from the waste it produces.

The Commission, supported by the CNSC, will be asked to make a series of critical decisions in the coming years that threaten to significantly impact SON, its rights, and Territory, such as the next phase of the DNNP, the refurbishment of the Pickering NGS, the Darlington NGS operating license renewal, and the relicensing of the Western Waste Management Facility. We will ask the Commission to take its constitutional obligations to SON seriously, as well as Canada's national and international commitments to implement UNDRIP, amidst pressure to significantly expand the scope of nuclear energy production in this country.