



**Written submission from the  
Hiawatha First Nation**

**Mémoire de la  
Première Nation de Hiawatha**

In the Matter of the

À l'égard d'

**Ontario Power Generation Inc.**

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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**



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May 16, 2024

**RE: Pickering Nuclear Generating Station – Power Reactor Operating Licence  
Amendment Application**

Aaniin Secretariat,

I am writing this written submission, on behalf of Hiawatha First Nation, in response to Ontario Power Generation's (OPG) licence amendment application for the Pickering Nuclear Generating Station (PNGS) Power Reactor Operating Licence, PROL 48.01/2028, to amend the current end of commercial operation date of PNGS Units 5 to 8 from December 31, 2024, to December 31, 2026. These written submissions are the view of Hiawatha First Nation only.

We appreciate the ongoing efforts of the Canadian Nuclear Sustainability Commission (CNSC) and OPG to engage and include our community in the nuclear projects and associated activities, within our treaty territory. We trust that, like us, you remain committed to this path of reconciliation we have embarked upon. There is still much to do.

**Background**

The hearing for this license amendment is meant to determine whether OPG will be authorized to operate PNGS units 5–8 until the end of 2026 (PNGS Life Extension). I repeat the remarks I made in previous CNSC hearings to help provide appropriate context:

- As Sovereign Nations who hold Inherent, Treaty and Aboriginal rights, our Nations were not consulted on the decision by Canada and Ontario to carry out past, present or future nuclear activities in our traditional and treaty territories, yet we are now host to the nuclear industry which was established and has operated for over 50 years in our territory without our consent.
- A demonstrated respect for Aboriginal and Treaty rights can be carried out through mutual decision-making processes, collaborative planning of project activities, co-developed and co-led rights-based ecological mitigation, compensations and restoration activities that are meaningfully informed by Indigenous knowledge.

- While much western-scientific data has been presented and considered as evidence, we wish to note that the entire assessment of the PNGS license amendment has occurred without fully understanding, evaluating and addressing impacts to our rights.
- We remain concerned about the legislative, regulatory and engagement processes that have been relied upon to contemplate, evaluate, and sustain the PNGS to date.
- It is important to note that any impacts to the environment, regardless of their severity as understood through western frameworks, represent potential and often real impacts to the Inherent, Aboriginal and Treaty Rights of the Michi Saagiig Anishinaabeg and Williams Treaties First Nations. This in turn triggers the Duty to Consult and Accommodate.

The PNGS continues to operate without the consent of our Nation. The processes that have kept our Nation from the decision-making table and that have excluded consideration of our laws and rights remain intact. The impact of the PNGS to our rights has still not been adequately investigated or understood by OPG and the CNSC; and the failure to discuss appropriate accommodation and compensation for the ongoing rights infringements continues to impede the growth of our relationships.

To paraphrase what has been said in relation to other colonial infrastructure projects: OPG, and other nuclear industry licensees, continue to enjoy the use of the land and waters in our territories while our people continue to experience the impact of the loss those uses create.

#### **Review of documents**

We have reviewed the submissions of OPG and the CNSC and are providing comment and response to those submissions in the attached appendices:

**Appendix A:** Comment/Response to OPG Application

**Appendix B:** Comment/Response to CNSC Submission

Chi Miigwetch,



Chief Laurie Carr  
Hiawatha First Nation

**Appendix A: Comment/Response to OPG Application**

<b>OPG Application</b>	<b>HFN Comment/Response</b>	<b>Recommendation</b>
<p>“This application demonstrates that the Pickering NGS will continue to meet all the legal requirements of the Nuclear Safety and Control Act and the associated Regulations, and that Pickering NGS will continue to operate safely and within the required margins for any operating nuclear plant.” (pg. 3 of application)</p>	<p>OPG has not considered additional Canadian legal requirements, specifically the protection of rights under s.35 of the Constitution Act, 1982, the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the 2018 Williams Treaty settlement agreement with, among others, OPG’s shareholder the Province of Ontario.</p>	<p>1) Enter into negotiations of a project agreement between OPG and HFN (and other Williams Treaties First Nations) addressing meaningful consultation, accommodation and participation in all aspects of the Pickering NGS project.</p>
<p>“OPG will continue to carry on the licensed activities and make adequate provisions to protect the health, safety and security of persons and the environment, and maintain national security and measures required to implement international obligations.” (pg. 3 of application)</p>	<p>The standards by which OPG protects the health, safety, and security of the persons and the environment and maintains national security are standards that exclude the rights and laws of the Michi Saagiig Anishinaabe.</p> <p>The implementation of First Nation standards to OPG operations is possible with appropriate time and resources.</p>	<p>1) Address how OPG has met Michi Saagiig standards of protecting health, safety, and security of the persons and the environment, and national security;</p> <p>2) Provide appropriate time and resources to allow for First Nation standards to be implemented and to measure compliance through a First Nation lens.</p>
<p>“OPG is committed to engaging with Indigenous Nations and communities regarding nuclear operations and future projects.” (pg. 6 of application)</p>	<p>OPG has demonstrated efforts to provide information to HFN with regard to the PNGS Life Extension.</p> <p>However, we aim for a more interactive process for this project. One of the primary hurdles to more meaningful consultation are project timelines. Project timelines</p>	<p>1) Create timelines, with input from rights holders, that consider and allow for meaningful consultation and engagement with First Nation rights holders;</p>

	are often created without consideration for the First Nations whose rights will be impacted and the duty to consult.	
<p>“OPG’s Indigenous Relations Policy provides a framework for engaging with Indigenous peoples and providing support for community programs and initiatives while respecting treaty and Aboriginal rights as per Section 35 of the 1982 Constitution Act.” (pg. 6 and pg. 71 of application)</p>	<p>OPG has articulated to the Michi Saagiig Nation representatives on several occasions that OPG will not provide equity and revenue sharing opportunities on existing assets, only new assets. This policy conflicts with the Indigenous Relations Policy of respecting treaty and Aboriginal rights.</p> <p>Respect for our rights would include an acknowledgement that historical wrongs have been committed which resulted in the illegal expropriation and degradation of our environment and therefore, the Michi Saagiig way of life.</p> <p>How does OPG reconcile their policies regarding no equity/revenue sharing on existing assets with their Indigenous Relations Policy?</p>	<p>1) Create a policy or amend existing policy to allow First Nation rights holders equity and revenue sharing opportunities on existing assets.</p>
<p>“The 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.” (pg. 71 of application)</p>	<p>It is not clear how OPG has reached the conclusion that there are no new adverse impacts on Aboriginal and/or treaty rights.</p> <p>It is also not clear how OPG has reached the conclusion that adverse impacts have been extended or what mitigation efforts are being made.</p> <p>This demonstrates a lack of understanding of the historical and ongoing impact of the PNGS on Michi Saagiig rights. There are no concrete examples of impacts or mitigation efforts that would allow the CNSC to make an informed decision as to their</p>	<p>1) Explain how the conclusion has been reached that there are no new adverse impacts on Aboriginal and/or treaty rights;</p> <p>2) Explain what adverse impacts to rights have been extended and what mitigation efforts are being made;</p> <p>3) Demonstrate understanding of the historical and ongoing impact of</p>

	satisfaction regarding engagement with First Nations on the PNGS Life Extension. The approval of nuclear operations in our territories must be supported by more than just platitudes.	the PNGS on Michi Saagiig rights.
<p>“Discussions were also held with Curve Lake, Scugog Island and Hiawatha 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. 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 to ensure they were informed ahead of time.” (pg. 73 of application)</p>	<p>This is misleading. Up until the public announcement in September 2022, HFN had only been engaged with OPG about the decommissioning of PNGS. We were alarmed at the sudden change of plans.</p> <p>There were no talks about PNGS Life Extension or Pickering Feasibility before the decision to extend was already made. There was no engagement or “in depth discussions” with HFN, just information sharing after the fact. No obligations of engagement and consultation were fulfilled.</p> <p>The only call I, as Chief, received from OPG was a voice message left the night before the provincial announcement to extend the life of PNGS. This is not meaningful engagement.</p> <p>It is unfortunate that the announcement was made in such a manner as it infects the perception of our citizens regarding the purpose of this hearing. It appears that the decision for Life Extension has already been made.</p> <p>It is unlikely, in our view, that OPG did not know about the PNGS Life Extension until the night before the public announcement. It is more likely that OPG chose not to disclose the information at a more appropriate time.</p>	<p>1) Co-develop a framework with First Nation rights holders regarding pathways to meaningful engagement and consultation, reconciliation, and sustainable development, preferably via a project agreement that, among many other things, identifies appropriate communication protocols, persons and timelines.</p>
In general, OPG’s application provides examples of the interactions/engagements	Our general response to this is that of the number of engagements and efforts by OPG,	1) When assessing whether the honour of the Crown and

<p>they have with HFN. These engagements include many different topics.</p>	<p>prior to the PNGS License Extension announcement in September 2022 to today, there was only one meeting about the PNGS Life Extension. This meeting was held after the decision to extend had already been made in September 2022.</p> <p>In determining whether the honour of the Crown and s.35 Aboriginal/treaty rights have been upheld, the evidence to support such assertions must be related to the specific project and not be general in nature.</p>	<p>Aboriginal/treaty rights have been upheld through the duty to consult and accommodate, the determination should be supported by project specific efforts and not general engagement. OPG should be proposing a broad project agreement to address consultation protocols as well as opportunities for economic participation in the project.</p>
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**Appendix B: Comment/Response to CNSC Submission**

<b>CNSC submission</b>	<b>HFN Comment/Response</b>	<b>Recommendation</b>
<p>“The common-law duty to consult with Indigenous Nations and communities applies when the Crown contemplates actions that may adversely affect potential or established Indigenous and/or treaty rights. The CNSC ensures that all of its licence decisions under the NSCA uphold the honour of the Crown and consider Indigenous peoples’ potential or established Indigenous and/or treaty rights pursuant to section 35 of the Constitution Act, 1982.” (pg 76 of CNSC submission)</p>	<p>As we understand the process, CNSC staff make recommendations to the CNSC tribunal about whether the honour of the Crown and Aboriginal/treaty rights have been upheld.</p> <p>Having CNSC staff making recommendations to the same administrative body’s tribunal creates the perception of potential bias, particularly as it relates to the duty to consult and accommodate with First Nations.</p> <p>Where First Nations and CNSC staff disagree about whether the duty to consult has been executed fairly, First Nations appear to be at a disadvantage.</p>	<p>1) Review this process and consult with First Nations to determine how to implement real change.</p>
<p>In general, CNSC’s application provides examples of the interactions/engagements they have with HFN. These engagements include many different topics.</p>	<p>Our general response to this is that of the number of engagements and efforts by CNSC, prior to the PNGS License Extension announcement in September 2022 to today, there have been minimal interactions about the PNGS Life Extension. Interactions about the life extension were held after the decision to extend had already been publicized in September 2022.</p> <p>In determining whether the honour of the Crown and s.35 Aboriginal/treaty rights have been upheld, the evidence to support such assertions must be related to the specific project and not be general in nature.</p>	<p>1) When assessing whether the honour of the Crown and Aboriginal/treaty rights have been upheld through the duty to consult and accommodate, the determination should be supported by project specific efforts and not general engagement.</p>
<p>In general, CNSC staff rely on the efforts and information</p>	<p>Our general response to this is also that brings a reasonable</p>	<p>1) Provide opportunities for</p>



<p>provided by OPG to determine their satisfaction with OPG's engagement efforts in relation to the PNGS Life Extension.</p>	<p>apprehension of bias into the CNSC's staff decisions regarding engagement.</p> <p>For example, at page 79 of the CNSC submission, it says: "In advance of OPG's announcement of their intent to seek Commission authorization to operate Pickering NGS Units 5–8 to the end of 2026 and to conduct a feasibility study on potential refurbishment, OPG made phone calls to the Chiefs of the Williams Treaties First Nations."</p> <p>We have already expressed how this information is misleading. When CNSC relies on the misleading information, it colours the entire result to be favourable to OPG regardless of the input provided by the Nations.</p>	<p>First Nation input on whether engagement efforts have been satisfactory. Including advance submissions on the depth, timing and frequency of engagement.</p>
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