



Supplementary Information

Written submission from Ontario Power Generation Inc.

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 d' Ontario Power Generation Inc.

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

May 30, 2024

CD# P-CORR-00531-23706 P

MS. CANDACE SALMON

Registrar,
Commission Registry

Canadian Nuclear Safety Commission
P.O. Box 1046
280 Slater Street
Ottawa, Ontario, K1P 5S9

Dear Ms. Salmon:

Pickering NGS - Request of Ruling from the Pickering Harbour Company Limited

The purpose of this letter is to respond to the written submissions from the Pickering Harbour Company (PHC) Limited, Frenchman's Bay Harbour & Marine Service Company Limited (collectively, "Pickering Harbour Company") set out in CMD 24-H5.33, CMD 24-H5.33A, CMD 24-H5.33B, and in particular, PHC's Request of Ruling provided as Attachment 1 of this letter.

OPG also notes several inaccuracies in CMD 24-H5.33 and CMD 24-H5.33A. The inaccuracies and OPG's response are provided in Attachment 2 to this letter.

In its submissions, Pickering Harbour Company asserts that Ontario Power Generation (OPG) is non-compliant with Licence Condition G.3 of OPG's current power reactor operating licence (PROL 48.01/2028) because OPG does not "control the use and occupation" of certain land within the Pickering Nuclear Generating Station (PNGS) exclusion zone – namely, portions of land on the property municipally known as 591 Liverpool Road which are owned by PHC.

In its Requests for Ruling, PHC makes two requests:

1. PHC seeks information from OPG related to whether, and in what ways, OPG's Preliminary Decommissioning Plan contemplates a reduction in the exclusion zone, and;
 2. PHC seeks a determination from the Commission, based on safety considerations, as to the timing of any potential exclusion zone reduction; and, if the Commission determines that the exclusion zone cannot be
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reduced after 2024, PHC seeks the imposition of a mandatory and expedited process for the determination of compensation payable to PHC.

OPG does not agree with PHC's submission that OPG is not compliant with its licence. As outlined in more detail below, PHC's Requests for Ruling are premature and not properly before the Commission on the current record. Accordingly, it would not be appropriate for the Commission to make any determinations at the upcoming hearing regarding the possibility of reducing the size of the exclusion zone, or the imposition of a process to require compensation to PHC. On a separate and without prejudice basis, OPG is willing to engage with PHC to assist with its underlying concerns, including providing PHC with requested information in reasonable timeframes.

OPG is Compliant with its Licence

OPG is compliant with its current licence conditions, and will remain compliant if the Commission grants OPG's application to extend commercial operations of Units 5-8. As CNSC staff noted in (Reference 1), OPG's Licence Conditions do not require specifically that OPG possess legal title to the lands within the exclusion zone. Rather, Licence Condition G.3 requires that OPG exercise control such that no permanent dwelling is built on those lands. OPG agrees with CNSC staff's submission that OPG achieves this control primarily through municipal zoning bylaws.

The current municipal land use restrictions on 591 Liverpool Road are clear: residential uses are not permitted. Under the Pickering Official Plan, 591 Liverpool Road is designated "Open Space System – Natural Areas" and "Open Space System – Marina Areas", neither of which permit general residential uses. Further, under Pickering Zoning By-Law 2520, the portions of 591 Liverpool Road owned by PHC are zoned "(H)O3B-2" and "OS-HL-5", neither of which permit residential development.

The City of Pickering has previously denied PHC's applications to amend the Official Plan and Zoning By-Law 2520. Further, the principles of interjurisdictional immunity and federal paramountcy limit the City of Pickering's legal authority to permit residential development in the exclusion zone. Permitting such development would likely impair the federal power over nuclear energy and OPG's nuclear undertaking. It would also likely conflict with and frustrate the purposes of the federal nuclear safety scheme. In other words, a decision by a non-federal entity purporting to authorize residential uses within the exclusion zone at 591 Liverpool Road may well be unconstitutional.

OPG has operated PNGS within the existing exclusion zone for decades with no assertion of non-compliance – from PHC or any other person. In fact, when PHC acquired 591 Liverpool Road for \$675,000 in 2001, these lands were already located within the PNGS exclusion zone. Further, OPG has always been transparent that there are lands in the exclusion zone which it controls but does not own. Not only is this expressly stated in OPG's Licence Conditions Handbook, but detailed explanations also appear in other licencing basis documents. The Commission has consistently granted operating licences to OPG for PNGS under these exact circumstances.

PHC's Requests for Ruling are Premature and Inappropriate

OPG submits that any ruling as sought by the PHC in the Request for Ruling in relation to the exclusion zone, other than OPG is compliant to the licence, at the upcoming hearing would be inappropriate. The composition of the exclusion zone is not at issue in the June 19-20 hearing. Rather, in this hearing, OPG seeks only to extend the operation of Pickering Nuclear Generating Station Units 5 to 8 until December 31, 2026. Licence Condition G.3, which requires OPG to control the use and occupation of the exclusion zone, will remain in place regardless of the outcome of the hearing. Accordingly, OPG's application does not contemplate any reduction in the exclusion zone, either now or in the future, nor does it include any relevant analysis regarding possible future treatment of the exclusion zone.

While OPG does not currently intend to seek to reduce the exclusion zone, we emphasize that the determination of an appropriate exclusion zone is a complex endeavour which must take into consideration multiple factors including evacuation needs, land usage needs, security requirements and environmental factors (Reference 2). Since the composition of the exclusion zone is not at issue, the analysis required to support any decision has not been completed and is not before the Commission. Like all administrative adjudicators, the Commission must ensure that its decisions are transparent, intelligible and justified, and procedurally fair. On the current record, it is difficult to see how this standard could be met: PHC's Requests for Ruling extend beyond the record and are not supported by a procedurally fair process. OPG also notes that any application to reduce the size of the exclusion zone would likely attract interest from a variety of stakeholders; some may favour such an outcome (like PHC), and some may oppose it. These stakeholders will not have sufficient opportunity to provide their input prior to June 2024.

Proposed Path Forward

For the reasons set out above, OPG does not believe that PHC's Requests for Ruling should be granted. However, on a without prejudice basis, there is an opportunity for further dialogue with PHC as a stakeholder as previously stated.

With regard to PHC's Requests for Ruling, OPG proposes to meet with PHC on an expedited basis to share relevant and available information (including, where possible, the information sought in Request for Ruling 1). We are encouraged that PHC's apparent timelines do not contemplate immediate development. Rather, as set out in PHC's Notice of Appeal of the City of Pickering's zoning decisions, PHC has accepted that residential uses within the PNGS exclusion zone are currently prohibited but contemplates future residential uses (Reference 3). OPG is hopeful that a dialogue could yield productive discussions about moving forward.

Sincerely,



Richard Geofroy
Deputy Chief Nuclear Officer and Pickering Site Vice President (Acting)
Pickering Nuclear
Ontario Power Generation Inc.

Attach or Encl

cc: CNSC Pickering Director – Regulatory Program Division
CNSC Director General – Directorate of Power Reactor Regulation
David R. Spencer – dspencer@srlawpractice.com

- References:
1. CNSC Commission Member Document, “Regulatory Oversight Report for Canadian Nuclear Power Generating Sites: 2022”, December 6, 2023, CMD: 23-M36.B
 2. CNSC Regulatory Document, “Design of Reactor Facilities: Nuclear Power Plants”, REGDOC-2.5.2.
 3. Letter, J. Pepino to S.Cassel, “Appeals Pursuant to Subsections 22(7) and 34(11) of the Planning Act, R.S.O. 1990, c P. 13, as amended Applications for Official Plan and Zoning By-law Amendment 591 Liverpool Road, City of Pickering City Files – OPA 19-001/P and A 05/19”, August 28, 2020.

ATTACHMENT 1

OPG Letter, R. Geofroy to C. Salmon, "Pickering NGS – Request of Ruling from the Pickering Harbour Company Limited"

CD# P-CORR-00531-23706 P

In letters dated April 26, 2024 (CMD 24-H5.33A), and April 29, 2024 (CMD 24-H5.33), the Registrar received a request for ruling from the Pickering Harbour Company Limited, for the following:

1. CNSC to require OPG to provide Pickering Harbour Company Limited with the following information and with an opportunity to review and respond to same, before CNSC providing any decision on the PROL extension for R5/8, namely:
 - a) a full and detailed explanation with data on the initial calculation of the inclusionary zone and the underlying assumptions. In addition we would request that OPG be required to provide all historical information relating to the initial calculation and the identification of the affected owners;
 - b) confirmation whether the Preliminary Decommissioning Plan which we understand will be updated, includes any re-calculations of the inclusionary zone dimensions given that reactors 1 through 4 will be taken off line, and if so, what milestones will be used for such re-calculation;
 - c) what is the timing of the milestones referred to in 2 above and how do these relate of tie into the 4 states referred in its supplementary report;
 - d) what time frames are associated with each of the 4 stages or states referred to in the supplementary report; and
 - e) is there a mandatory review of any inclusionary zone where nuclear facilities are taken off-line and permanently shut down.
2. If CNSC, after reviewing submissions on all of the foregoing, determines that the current inclusionary zone cannot be reduced after 2024 for safety reasons, or that any reduction will take time and be tied to the four stages referred to above when reactors 1 through 4 are shutdown, then we submit that this will require an alteration to the existing licences in that OPG should be required to confirm that it does not control all the lands within the inclusionary zone as currently required by its PROL and accordingly, any affected owner is entitled to compensation for the continued imposition of the inclusionary zone on its/his/her/their lands. This should include a mandatory and expedited process for the determination of any such compensation.

ATTACHMENT 2

OPG Letter, R. Geofroy to C. Salmon, "Pickering NGS – Request of Ruling from the Pickering Harbour Company Limited"

CD# P-CORR-00531-23706 P

OPG Response to Incorrect Information Contained in the Submissions of the PHC (CMD-H5.33 and CMD-H5.33A) and OPG Response

Written Submission from the Pickering Harbour Company Limited, Frenchman's Bay Harbour & Marine Service Company Limited, April 29, 2024 - CMD 24-H5.33

1. The PCH submission states in regard to:

Re: Pickering Harbour Company Limited ("**PHC**"), Frenchman's Bay Harbour & Marine Service Company Limited ("**FBHMSC**") and Ontario Power Generation ("**OPG**") application for licence renewal to the Canadian Nuclear Safety Commission ("**CNSC**") for the Pickering Nuclear Power Generating Station ("**PNPG**") for Reactors 5 to 8 ("**R5/8**") Our File No.: 31403

OPG Response: The current matter before the Canadian Nuclear Safety Commission is not an application for a licence renewal it is an application to extend the operations of Pickering NGS Units 5 to 8.

2. Page 2, paragraph 3:

Currently almost all of these lands are subject to an exclusion zone in favour of the Pickering Station which zone restricts the construction of any "permanent dwelling" on the 591 Liverpool Road lands.

OPG response: The lands were designated as an exclusion zone as required by the Nuclear Safety and Control Act, which replaced the Atomic Energy Control Act, under which Pickering Nuclear was first licensed and the exclusion zone established.

3. Page 2, paragraph 7:

However more importantly the above noted statement in the Preliminary Decommissioning Plan is a de facto acknowledge by OPG that it is NOT in compliance with the requirements of the regulatory SOR/2000-204 and the terms of its Power Reactor Operating Licence.

OPG response: The Pickering Licence Conditions Handbook (LCH), which is produced and approved by the CNSC staff, identifies and clarifies the relevant parts of the licensing basis for each licence condition. As per the LCH the Compliance Verification Criteria (CVC) are used by CNSC staff to verify and oversee compliance with the licence condition. In Pickering's LCH for the licence condition for the exclusion zone, the following statement is included under CVC:

OPG's document NK30-D0A-10200-0001, Building Development Site Plan, describes the exclusion zone and identifies the parcels of land within the exclusion zone that are controlled but not owned by OPG. The licensee shall notify the CNSC of changes to the use and occupation of any land within the exclusion zone.

The City of Pickering has already denied PHC's applications to amend the Official Plan and Zoning By-Law 2520. Further, any decision to amend the Official Plan or Zoning By-Law would

likely offend the doctrine of interjurisdictional immunity by impairing vital and essential aspects of a federal undertaking, i.e. the regulation of nuclear facilities. In other words, a decision by a non-federal entity purporting to authorize residential uses within the exclusion zone at 591 Liverpool Road may well be unconstitutional.

PHC acknowledges at page 3 of 24-H5.33 that the land is controlled by the City of Pickering via zoning and no permanent dwelling is allowed on lands within the exclusion zone.

4. Page 3, paragraph 3:

We note that the 3000 foot exclusion zone limit has not been applied uniformly in Ontario. The exclusion zone limit at the Darlington Nuclear Generating Station is 500 meters due in part to the fact that OPG did not own or control certain lands outside the 500 meter radius. Regulation RD 337 provides criteria, including subjective criteria, for OPG to consider when determining an exclusion zone, including land usage needs.

OPG response: The statement that the Darlington Nuclear Generating Station exclusion zone is 500 meters is incorrect. Darlington Station is licensed to have an exclusion zone of 914 metres, as is the Bruce Power Nuclear Generating Station. Therefore, the exclusion zone has been applied consistently in Ontario for CANDU pressurized heavy water reactors. It is the site preparation licence for Darlington New Nuclear that specifies an exclusion zone of 500 metres from the exterior of any reactor building.

5. Page 4, paragraph 2:

Our client is requesting that the Commission use its regulatory authority under the Nuclear Safety and Control Act to require that OPG address its non-compliance with respect to the exclusion zone affecting our client's lands as a condition of the renewal of the licence for the Pickering Station.

And Page 4, paragraph 3:

"...OPG should be required to affirm that it does not control all the lands within the inclusionary zone as currently required by its PROL..."

OPG Response: There is not a non-compliance. OPG's Licence Conditions do not require specifically that OPG possess legal title to the lands within the exclusion zone. Rather, Licence Condition G.3 only requires that OPG exercise control such that no permanent dwelling is built on those lands. OPG agrees with CNSC staff's submission (Reference A2-1) that there are no concerns regarding the health and safety of persons or the environment in relation to the present use of the exclusion zone and consider it to be adequately controlled for the purposes of the licence condition and the established CVCs.

Written Submission from the Pickering Harbour Company Limited, Frenchman's Bay Harbour & Marine Service Company Limited, April 26, 2024 - CMD 24-H5.33A

1. The PCH submission states in regard to:

Re: Pickering Harbour Company Limited ("**PHC**"), Frenchman's Bay Harbour & Marine Service Company Limited ("**FBHMSC**") and Ontario Power Generation ("**OPG**") application for licence renewal to the Canadian Nuclear Safety Commission ("**CNSC**") for the Pickering Nuclear Power Generating Station ("**PNPG**") for Reactors 5 to 8 ("**R5/8**") Our File No.: 31403

OPG Response: The current matter before the Canadian Nuclear Safety Commission is not an application for a licence renewal it is an application to extend the operations of Pickering NGS Units 5 to 8.

2. Page 2, Paragraph 5:

The easiest path for OPG would be to do nothing with respect to the inclusionary zone and clearly from the comments at the hearing in December, OPG was candidly dismissive of any consideration of a reconsideration of the inclusionary zone. At the same time OPG did not comment on the fact that inclusion of private lands in the inclusionary zone was a contravention of its existing licence. We reiterate that it is our position that OPG is already in violation of the terms of its existing PROL in that it does not control all the lands affected by the inclusionary zone and it has refused to address this issue with our client.

OPG Response: Pickering Nuclear Generating Station is in compliance with the Power Reactor Operating Licence (PROL). The licensing status of Pickering Nuclear Units 1-4 is to be in a storage with surveillance state. Re-sizing the exclusion zone would be premature at this time as there has been no decision regarding the future use of the Pickering 'A' (Units 1-4) site.

Reference:

- A2-1. CNSC Commission Member Document, "Regulatory Oversight Report for Canadian Nuclear Power Generating Sites: 2022", December 6, 2023, CMD: 23-M36.B