Canadian Nuclear Safety Commission | Commission canadienne de sûreté nucléaire

CMD 26-H7.49D

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Supplementary Information

Written Submission from the Michi Saagiig Anishinaabeg Nations of the Williams Treaties First Nations (MS-WTFNs)

In the matter of

Ontario Power Generation

Application to refurbish Pickering Nuclear Generating Station and to renew licences for the Pickering Nuclear Generating Station and Waste Management Facility

Commission Public Hearing
Part 2

October 6-9, 2026

Renseignements supplémentaires

Mémoire des Nations Anishinaabeg Michi Saagiig des Premières Nations des Traités de Williams (MS-WTFNs)

À l'égard de

Ontario Power Generation

Demande concernant la réfection de la centrale nucléaire de Pickering et le renouvellement de ses permis pour la centrale et l'installation de gestion des déchets

Audience publique de la Commission
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Our File No. 255245

November 19, 2026

VIA EMAIL

Canadian Nuclear Safety Commission
280 Slater St
PO Box 1046 Stn B
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Attention: Candace Salmon, Commission Registrar

Dear Ms. Salmon:

Re: Written Submissions of Alderville First Nation, Curve Lake First Nation, Hiawatha First Nation and the Mississaugas of Scugog Island First Nation (the "MS-WTFNs") in the Ontario Power Generation ("OPG") License Application Regarding the Refurbishment of the Pickering Nuclear Generating Station, the Renewal of the Pickering Nuclear Generating Station and Waste Management Facility Procedural Direction DIR 26-H7

Attached is the joint submission of the MS-WTFNs in this proceeding filed as set out in the Procedural Direction DIR 26-H7 dated 20 October 2026.

Yours truly,

FOGLER, RUBINOFF LLP



Kate Babony
KB
cc: Kate Babony, Scott Stoll, Fogler Rubinoff, Legal Counsel
Ontario Power Generation
Intervenors/Participants

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Part 1 – Introduction

A. Purpose and Scope of this Submission

1. This supplemental submission is made on behalf of the Michi Saagiig Anishinaabeg of the Williams Treaties First Nations of Alderville First Nation, Curve Lake First Nation, Hiawatha First Nation, and the Mississaugas of Scugog Island First Nation (the "MS-WTFNs"), in response to Procedural Direction 26-H7 (the "Procedural Direction").

2. The MS-WTFNs are not ordinary intervenors. They are treaty partners, rights holders and governments. The Pickering Nuclear Generating Station ("PNGS") is located on their lands and lakebeds and uses their waters. These natural resources are considered assets in the Western world but to the MS-WTFNs, they are Relatives that sustain life and to which the MS-WTFNs' harvesting rights, governance and laws attach.

3. The MS-WTFNs laws require a reciprocal relationship of recognition and protection; it is their inherent duty and any impact to Relatives, their habitats, or cultural landscapes must be recognized as infringement upon section 35 Rights.

> Anishinabek Chiefs-in-Assembly have recognized 10 inherent rights of nature in a landmark resolution rooted in Anishinaabe Law. Announced 13 November 2026, following the Fall Assembly in Ontario, the decision recognizes waters, forests, wildlife, plants, and ecosystems as living parts of Creation with inherent value beyond human use. The 10 rights include the right to exist and flourish, regenerate, maintain biodiversity, remain free from pollution, and receive protection against environmental harm. Introduced by Alderville First Nation Chief Taynar Simpson, the resolution allows participating First Nations to adopt their own protections for specific rivers, lakes, forests, watersheds, and species under Anishinaabe Law. It also supports the proposed creation of an Anishinaabe Rights of Nature Tribunal, where alleged violations could be examined and remedies considered. The decision advances Indigenous-led environmental governance while reaffirming responsibilities toward Nibi (water), the land, and future generations.[1]

4. The MS-WTFNs appear before the Canadian Nuclear Safety Commission ("CNSC" or the "Commission") as rights holders the Crown must accommodate, not as one stakeholder among many. We urge the Commission to consider natural resources as natural Relations

[1] Anishinabek Nation – Official Announcement.

rather than extractable and expendable commodities; it is the MS-WTFNs' legal responsibility to do so.

5. That distinction is not a matter of form. It governs how the MS-WTFNs' participation in this proceeding must be understood. The Commission acts for the Crown in discharging the duty to consult and accommodate ("DTCA"). The Crown's fiduciary obligations and the honour of the Crown run to the MS-WTFNs, they do not run to Ontario Power Generation Inc. ("OPG"). The MS-WTFNs' submissions must be read, and answered, in that light.

6. The scope of this submission is set by paragraph 9 of the Procedural Direction. It invites submissions on three matters: (a) the information added to the record; (b) the proposed licence conditions; and (c) engagement and consultation since 9 October 2026. This submission is directed to two of them: Licence Condition G.7, and the engagement and consultation on that condition since 9 October 2026. The two are intertwined. Engagement with OPG since 9 October 2026, including on Licence Condition G.7, Licence Conditions Handbook ("LCH"), and Term Sheet enabling agreement shows why the accommodation must sit in the licence itself. This submission does not address the information added to the record in detail but silence on any item does not equal acceptance of it.

7. This submission builds on, and incorporates by reference, the MS-WTFNs' prior materials in this proceeding:

   (a) the MS-WTFNs' written intervention;

   (b) the MS-WTFNs' oral presentation to the Commission on 6 October 2026; and

   (c) CMD 26-H7.49C, the MS-WTFNs' proposed revised text for Licence Condition G.7.

8. Nothing in this submission is consent. The MS-WTFNs were not asked nor consulted on PNGS when it was built, or subsequently relicensed. The regulatory timelines do not reflect the community engagement process required to seek and obtain the communities' consent. Such a process requires adequate time to understand the full potential impacts of the project, to engage with, and hear feedback from members on those potential impacts, to ensure Elders and Knowledge Keepers are meaningfully consulted, and to bring this information to Chief and Council to ensure they are making informed decisions in the best interest of their community.

9. The C3RA, requested Licence Condition and corresponding LCH are thoughtfully designed to help marry the regulatory timelines with a proper MS-WTFN process. All three elements work together, and the intended goal cannot be achieved if one element is removed.

10. The theme of this submission is simple. The existing system must evolve to respect the jurisdiction of the MS-WTFNs. The status quo is not an acceptable standard as it does not reflect the legal relationship between the MS-WTFNs and the Crown and it does not reflect the evolving state of the law. An Indigenous Engagement Plan is not consultation, accommodation, nor consent. The Darlington New Nuclear Project ("DNNP") Licence Condition, for which the current Licence Condition G.7 is premised, was the first step to reflect the true nature of the MS-WTFNs' rights and Crown relationship but it did not go

far enough. Repeating it at PNGS simply because it is the status quo, would turn a first step into a ceiling. This licence is an opportunity to properly evolve the condition, and to provide security for the project and Canada's long-term nuclear strategy. We believe it is Canada's best interest to accept the updated Licence Condition wording. The MS-WTFNs' engagement with this process and Licence Condition G.7 is made without prejudice to their title, rights and jurisdiction.

B. Overview and the Order Sought

11. PNGS has operated for more than half a century without the MS-WTFNs' consent or perspectives. The Commission is now asked to authorize the station's future for decades to come. The question we are asking is narrow: will the MS-WTFNs' Indigenous Knowledge will be integrated into OPG's policies and procedures as a binding condition of that licence, or will the Commission leave the voice and governance of the MS-WTFNs to the discretion of OPG?

12. The MS-WTFNs respectfully ask the Commission to respect their authority and legal treaty relationship by adding the following sentence to Licence Condition G.7:

> *In respect of the Michi Saagiig Anishinaabeg of the Williams Treaties First Nations, the licensee shall incorporate Indigenous Knowledge, as shared and where appropriate, into its policies, procedures and regulatory documents.*

13. The Commission should grant this request for four reasons. **First**, the Commission acts for the Crown in discharging the constitutional DTCA, and binding licence conditions are the instrument the Supreme Court of Canada has recognized as capable of discharging that duty. **Second**, the condition is squarely within the Commission's power under s. 24(5) of the Nuclear Safety and Control Act ("NSCA") because Indigenous Knowledge bears directly on the health, safety and environmental risks the Act exists to limit. **Third**, the LCH is not an equivalent vehicle: only a licence condition carries the force of law, and only breach of a condition is an offence. **Fourth**, OPG has already accepted the words proposed, provided they sit in the LCH. Its objection is not to what the condition says; it is to being bound by it.

14. The language is modest. It is triggered only when the MS-WTFNs choose to share knowledge, and it applies only where incorporation is appropriate. A condition this measured is the least the Crown's obligations require. Anything less leaves the licence beginning its term already out of step with the law.

C. Background

1. The MS-WTFNs, the lands and the Williams Treaties

15. PNGS draws on Lake Ontario for cooling water and discharges in to it; those waters, the beings which rely upon the waters and the surrounding lands are Relatives to which the MS-WTFNs' harvesting rights, governance and laws attach.

16. In 2018, after decades of litigation, Canada, Ontario and the seven Williams Treaties First Nations concluded a settlement agreement (the "2018 Settlement Agreement") which, among other things, recognized the MS-WTFNs' continuing pre-Confederation treaty

harvesting rights and was accompanied by apologies from Canada and Ontario for the harms caused by the 1923 Williams Treaties.

2. The licence condition in issue

17. In this renewal, CNSC staff proposed Licence Condition G.7, "Indigenous Engagement." As proposed, it requires OPG to maintain an Indigenous Engagement Plan with the details of that plan to be included in the LCH. The MS-WTFNs have stated that they do not give consent and support for the project as the regulatory process made it impossible to follow their required community engagement and governance process.

18. Through conversations with OPG, they have relayed their position that the Indigenous Knowledge language should be placed in the LCH rather than in the licence, that the term "Indigenous Knowledge" is unclear, and that the condition would be difficult to enforce.

19. OPG's DNNP was the first time OPG was required to conduct Indigenous engagement activities throughout the licence period. This was a first step and has had limited success from the MS-WTFNs point of view. No adopted CNSC licence condition yet requires Indigenous Knowledge to be integrated into a licensed activity. The PNGS licence is an opportunity to properly evolve the condition.

Part 2 – Licence Condition

A. Issues

20. This section addresses the following issues:

(a) Does the current condition reflect the MS-WTFNs' title, jurisdiction and treaty rights, and the absence of their consent?

(b) Does the Crown's DTCA require that the accommodation appear in the licence itself?

(c) What do the Crown's fiduciary and treaty obligations, including the 2018 Settlement Agreement, require of the Commission?

(d) Is the LCH an equivalent vehicle to a licence condition?

(e) Must "Indigenous Knowledge" be defined in the condition?

(f) Does the proposed language give OPG sufficient operational flexibility?

(g) Is the condition clear and enforceable?

(h) Is the status quo adequate?

(i) Does a binding condition serve Canada's nuclear and energy interests?

B. Law and Argument

1. The MS-WTFNs Hold Title and Jurisdiction, and Have Never Consented

(a) Title confers the right to decide how land is used

21. Aboriginal title is a right to the land itself. In *Tsilhqot'in Nation v. British Columbia,* the Supreme Court held that title confers on the group that holds it the exclusive right to decide

how the land is used and the right to benefit from those uses.[2] Where title exists, incursions are permitted only with the consent of the title-holding group or where justified by a compelling and substantial public purpose consistent with the Crown's fiduciary duty. Before title is established, the Crown must consult in good faith and, where appropriate, accommodate.

22. Proceeding with the licence without proper accommodation for title infringement risks the certainty of the project, and future projects in the same territory. Such risks can be avoided by providing the necessary Licence Condition as accommodation.

(b) PNGS relies on Relatives subject to the MS-WTFNs' authority

23. PNGS is not a passive structure. It withdraws and returns lake water, affects all the Relatives which rely upon the water and occupies lands within the MS-WTFNs' territory throughout an operating life measured in decades. These are the lands, waters and Relatives over which the MS-WTFNs exercise decision-making authority under their own laws, and in respect of which they hold treaty rights. The Supreme Court has confirmed that "Indigenous legal orders form an integral part of Canadian law"[3] and in *Ontario (Attorney General) v. Restoule*[4] relied on Anishinaabe legal principles to interpret treaty promises.

(c) No consent and no meaningful compensation

24. The MS-WTFNs were not asked for their consent when PNGS was built, and they have not been asked since. They have not been meaningfully compensated for the station's use of their lands, waters and Relatives. An Indigenous Engagement Plan does not cure this. It starts from the premise that the land is available, the project will proceed and treats the title holder as one stakeholder among many. That framing assumes the answer to the very question title reserves to the MS-WTFNs.

25. The proposed amendment does not ask the Commission to resolve title. It asks for something far more modest: that the licence, in its own terms, recognize that the MS-WTFNs have a legal relationship with the Crown to protect their Rights and they hold knowledge about their lands, waters, and Relatives that OPG must incorporate when it is shared and where it is appropriate. The current condition does not reflect even that much.

2. The Crown's DTCA, and UNDRIP, Require the Accommodation to be in the Licence

(a) The Commission acts for the Crown

26. The CNSC acts as an agent of the Crown in discharging the DTCA. In *Clyde River (Hamlet) v. Petroleum Geo-Services Inc*. the Supreme Court held that a regulator's decisions "must conform to s. 35(1)," that the regulator must "explain how it considered and addressed" Indigenous concerns, and that where the duty remains unfulfilled the regulator "must withhold project approval."[5]

[2] 2014 SCC 44 at para 73 [*Tsilhqot'in*].
[3] *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10 at para 322.
[4] 2024 SCC 27 [*Restoule*].
[5] 2017 SCC 40 at paras 30-35, 39 and 42 [*Clyde River*].

(b) Deep consultation is owed

27. Under *Haida Nation v. British Columbia (Minister of Forests)*[6] the content of the duty is proportionate to a preliminary assessment of the strength of the claim and the seriousness of the potential adverse effect. Where the claim is strong and the risk of non-compensable harm is high, "deep consultation, aimed at finding a satisfactory interim solution, may be required." Meaningful consultation "may oblige the Crown to make changes to its proposed action based on information obtained through consultations."[7] The MS-WTFNs' treaty rights are established, their title claim is strong, and the impacts span a long-term licence. Consultation at the deep end of the spectrum is owed. *Haida* speaks directly to the MS-WTFNs' current position and the C3RA, licence condition, and corresponding LCH together are their satisfactory interim solution.

(c) Binding conditions are the recognized form of accommodation

28. In *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc*.[8] the duty was discharged because the regulator provided written and binding conditions of accommodation to adequately address the potential for negative impacts on the asserted rights. The operative words are "written and binding." Licence Condition G.7 is the Commission's accommodation of the MS-WTFNs' rights in this proceeding. It can perform that constitutional function only if it binds.

29. The Commission's own guidance recognizes this. REGDOC-3.2.2 states that the Commission "is authorized to attach any conditions to licences that it deems necessary," and that it is "at the Commission's discretion to impose licence conditions to ensure that any adverse impacts from the regulated facility or activity are avoided, mitigated or accommodated."[9]

(d) The duty cannot be delegated to OPG

30. *Haida* permits the Crown to delegate "procedural aspects of consultation" to proponents but the honour of the Crown cannot be delegated.[10] *Clyde River* repeats that the duty to consult is owed by the Crown and where the regulatory process being relied upon does not achieve adequate consultation or accommodation, the Crown must take further measures to meet its duty.[11] An Indigenous Engagement Plan is OPG's instrument, designed on OPG's timeline, without binding commitments. If accommodation rests on OPG's discretion rather than on a Crown-imposed condition, the Crown has not accommodated; it has handed the task to a party that owes the MS-WTFNs no constitutional duty.

31. The Federal Court of Appeal has twice quashed major approvals where the Crown has not properly consulted and accommodated and confined itself to listening and recording: *Tsleil-Waututh Nation v. Canada (Attorney General)*[12] for want of "responsive, considered and meaningful dialogue coming back from Canada," and *Gitxaala Nation v. Canada*

[6] 2004 SCC 73 at para 39 [*Haida*].
[7] *Haida* at paras 44 and 46.
[8] 2017 SCC 41 at para 64 [*Chippewas of the Thames*].
[9] REGDOC 3.2.2 s. 3.5.
[10] *Haida* at para 53.
[11] *Clyde River* at para 22.
[12] 2018 FCA 153 at para 559 [*Tsleil-Waututh*].

where Canada failed to "engage, dialogue and grapple with the concerns" expressed by the First Nation.[13] A condition that merely requires an engagement plan is located at exactly that "listen and record" end of the spectrum.

(e) UNDRIP

32. The *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14 ("UNDRIP Act"), affirms the United Nations Declaration on the Rights of Indigenous Peoples (the "Declaration" or "UNDRIP") "as a universal international human rights instrument with application in Canadian law"[14] and requires the Government of Canada to "take all measures necessary to ensure that the laws of Canada are consistent with the Declaration."[15] Article 32(2) of the Declaration requires states to consult and cooperate in good faith with Indigenous peoples "in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources." Article 31 recognizes Indigenous peoples' right to maintain, control, protect and develop their traditional knowledge.

33. The Supreme Court has treated the Declaration as part of the framework for interpreting federal law[16] describing Indigenous, domestic and international law as forming a "single, strong rope."[17] Section 3(a) of the NSCA directs that risks be limited "in a manner that is consistent with Canada's international obligations." The CNSC itself states that it seeks free, prior and informed consent when rights and interests may be affected by nuclear projects, and that its approach to the Declaration includes collaborating with Indigenous Nations on the development of licence conditions. In our latest meeting with CNSC staff the MS-WTFNs were pleased to hear staff reiterate that this application engages the Declaration. The requested amendment puts that collaboration process in to practice.

34. In *Kebaowek*,[18] the Federal Court of Appeal held that the Commission is not the "Government of Canada" responsible for implementing the UNDRIP Act. That holding leaves a gap. Where a nuclear project may adversely affect the rights of a First Nation, and those rights engage the Declaration, we are left with no authorizing body clearly responsible for ensuring that the UNDRIP Act is upheld. That gap does not make the Declaration irrelevant to this proceeding. Since *Kebaowek* was released, CNSC staff have confirmed that the Declaration applies to the MS-WTFNs in respect of this licence application. The Commission should not treat the absence of a clearly responsible Crown body as a reason to set the Declaration aside. Doing so would be risky, and it would be inconsistent with the CNSC's own stated approach to the Declaration, which includes collaborating with Indigenous Nations on the development of licence conditions. The requested amendment to Licence Condition G.7 is the means of giving effect to the Declaration here.

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[13] 2016 FCA 187 at para 325.
[14] UNDRIP Act s. 4(a).
[15] UNDRIP Act s. 5.
[16] *Reference re An Act respecting First Nations, Inuit and Métis children, youth and familie*s, 2024 SCC 5 at paras 7 and 90.
[17] *R. v. Cope*, 2026 SCC at para 6.
[18] Canadian Nuclear Laboratories v. *Kebaowek,* 2026 FCA 174 at para 101.

3. The Crown's Fiduciary Duty and the 2018 Settlement Agreement

35. The Crown's fiduciary obligations and the honour of the Crown run to the MS-WTFNs. They do not run to OPG. Where the Commission must choose between OPG's preference for flexibility and the MS-WTFNs' interest in binding protection, the Crown's obligations point in one direction.

36. The honour of the Crown requires more than procedure. In *Restoule*, the Supreme Court held that the duty of diligent implementation holds the Crown responsible for making good on its treaty promises, requires a "broad purposive approach," and "cannot impose only procedural obligations."[19] In *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*[20] and *Grassy Narrows First Nation v. Ontario (Natural Resources)*[21] the Court confirmed that the Crown's exercise of treaty powers over land is subject to the duty to consult and the honour of the Crown.

37. The 2018 Settlement Agreement is a modern act of reconciliation by both Crowns with these very Nations. It recognized the harvesting rights the 1923 treaties had been said to extinguish. The Commission, as a Crown agent making a long-term decision about the use of the MS-WTFNs' lands and waters, must give that agreement life. A licence that leaves the protection of the MS-WTFNs' knowledge, harvesting and relationship with Lake Ontario to OPG's discretion does not.

38. Cumulative effects reinforce the point. In *Yahey v. British Columbia*[22] the Province infringed Treaty 8 by permitting the cumulative impacts of industrial development to meaningfully diminish the exercise of treaty rights. Lake Ontario and the north shore have borne generations of industrial and energy development. Integrating the MS-WTFNs' Indigenous Knowledge into OPG's policies and procedures is how the licensee learns where those thresholds lie.

4. The LCH Is Not an Equivalent Vehicle

(a) Only a licence condition has the force of law

39. Section 24(5) of the NSCA provides that a licence "may contain any term or condition that the Commission considers necessary for the purposes of this Act." Failure "to comply with any condition of a licence" is a direct offence under s. 48(c), punishable on indictment by a fine of up to $1,000,000, imprisonment of up to five years, or both (s. 51(3)). The LCH is not a licence condition. It is a staff document that explains how conditions are to be verified. Content placed only in the LCH carries no independent offence consequence.

40. OPG will say that LCH content becomes part of the licensing basis. That is true only to the extent it is anchored to a condition in the licence. Where a REGDOC is "referenced in a licence either directly or indirectly," it "is part of the licensing basis." The LCH derives whatever force it has from the conditions it interprets. If the condition says nothing about Indigenous Knowledge, the LCH cannot create an obligation the licence does not contain.

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[19] *Restoule* at paras 254-255.
[20] 2005 SCC 69.
[21] 2014 SCC 48.
[22] 2021 BCSC 1287 at para 1884.

(b) The LCH can be changed without the MS-WTFNs or the Commission

41. A licence condition can be varied only by the Commission, through a public, reasoned process, and OPG has a statutory right to seek a rehearing and redetermination under s. 43(2). That is the proper route if OPG later finds the condition unworkable. The LCH, by contrast, is revised administratively. A protection that can be changed without a Commission decision and without the MS-WTFNs at the table is not accommodation. It is a policy preference that can be withdrawn.

(c) The Chippewas of the Thames standard requires a binding condition

42. Accommodation must be "written and binding" to discharge the duty.[23] The LCH is written but it is not binding. OPG's position therefore asks the Commission to accept that a non-binding statement can perform a constitutional function the Supreme Court has said requires a binding one. It cannot.

5. "Indigenous Knowledge" Requires No Definition in the Condition

43. "Indigenous Knowledge" is a recognized term used throughout CNSC documentation. The CNSC's Indigenous Knowledge Policy Framework treats it as "considered alongside western science in regulatory and environmental reviews," lists among its uses "environmental risk assessments and human health risk assessment reviews" and the Independent Environmental Monitoring Program, and states that the CNSC expects licensees "to work directly with Indigenous Nations, communities and knowledge holders on gathering, incorporating and reflecting Indigenous Knowledge in their project designs, operations, reports and monitoring, as appropriate." REGDOC-3.2.2 states that Indigenous Knowledge "may help to identify potential impacts ... on traditional land use, treaty rights, Indigenous rights, and culturally important sites." The Commission does not need to define in a licence a term its own framework already defines and operationalizes.

44. More fundamentally, the condition is engaged only when the MS-WTFNs share Indigenous Knowledge. What is shared is, by definition, identified by the MS-WTFNs. It is for the MS-WTFNs, not OPG and not the Commission, to determine what constitutes their Indigenous Knowledge in any given context. That approach is consistent with Article 31 of the Declaration, and academic literature[24] relied on by the Supreme Court, which describes them as diverse, locally grounded and continuing to grow and evolve, so that the knowledge is properly identified and communicated by the Nation through its own processes.

45. MS-WTFNs Elders testified before the Commission that it is inappropriate for non-Indigenous people to determine what is and is not Indigenous Knowledge. That evidence is uncontradicted. A definition drafted by OPG or by the Commission would do precisely what the Elder said should not be done.

46. Professor John Borrows cautions that care must be taken "to ensure that Indigenous legal traditions are not held to a higher standard of intelligibility than non-Indigenous law."[25] The NSCA itself relies on undefined but well-understood terms: it does not define

[23] *Chippewas of the Thames* at para 64.
[24] John Borrows, *Canada's Indigenous Constitution* (University of Toronto Press, 2010).
[25] Borrows at pg. 142.

"environment." Licence conditions routinely use terms such as "adequate" and "appropriate" that are given content by REGDOCs and practice. Indigenous Knowledge should be treated no differently.

6. The Language Is Already Flexible; OPG's Real Objection Is to Being Bound

47. The proposed language contains two qualifiers: "as shared" and "where appropriate." Together they give OPG substantial operational latitude. The obligation does not arise until the MS-WTFNs share knowledge. Once it arises, it extends only to incorporation where appropriate. OPG is not required to act on knowledge it has not received, nor to incorporate knowledge in a manner that would be inappropriate in the operational, safety or regulatory context.

48. The condition therefore becomes contentious in one situation only: where the MS-WTFNs have shared Indigenous Knowledge, incorporation would be appropriate, and OPG nonetheless declines to incorporate it. That is precisely the situation in which a binding obligation is needed, and precisely the situation in which the Commission, rather than OPG alone, should be the final arbiter.

49. OPG has voiced acceptance of this language in the LCH. It cannot credibly maintain both that the words are acceptable guidance and that they are too unclear to be a condition. The words are the same in either document. The only difference is legal consequence. OPG's objection is therefore not to the language. It is to being legally bound by it.

7. The Enforceability Objections Are Unfounded

(a) The condition is clear

50. The condition tells OPG what to do: incorporate Indigenous Knowledge that the MS-WTFNs share into its policies and procedures, where appropriate. Compliance is verifiable. CNSC staff can ask what knowledge was shared, which policies and procedures were affected, and how the knowledge was incorporated or, if it was not, why incorporation was not appropriate. These are ordinary compliance questions, auditable through the LCH and inspections, which is the LCH's proper role.

(b) The condition is consistent with the general approach of licence conditions

51. CNSC licence conditions are deliberately broad and general. They require the licensee to implement and maintain programs and leave the detail of verification criteria to the LCH. Proposed G.7 itself requires an engagement program without prescribing its content; the DNNP condition requires OPG to "conduct Indigenous engagement activities" without defining them. The requested language is framed at the same level of generality.

(c) The Commission has the tools to enforce it

52. The NSCA provides inspector orders (s. 35), administrative monetary penalties (s. 65.01 and following), the direct offence in s. 48(c), and the Commission's power to amend, suspend or revoke a licence (s. 25). The Commission may also redetermine any term or condition on its own initiative (s. 43(3)). Difficulty of enforcement is not a reason to decline a condition; it is a matter for the LCH to address through verification criteria, which the MS-WTFNs would welcome the opportunity to co-develop.

(d) The objections are pretextual

53. OPG raises no objection to the substance of incorporating Indigenous Knowledge. It accepts the language in the LCH. Its concerns about clarity and enforceability would apply equally there, yet OPG does not raise them in that context. An objection that disappears when the obligation becomes non-binding is not about clarity. It is about consequences.

8. The Status Quo Is Inadequate and Must Not Be Accepted

54. The existing condition requires only an Indigenous Engagement Plan. An engagement plan is a proponent's communications and project-management document. It is not consultation, it is not accommodation, and it is not consent. It does not reflect the MS-WTFNs' jurisdiction, treaty rights or decision-making authority, and it does not require the meaningful braiding of Indigenous Knowledge into the licensee's operations. Its typical tools, information sessions, comment tracking and "what we heard" reports, share information without committing anyone to change.

55. The DNNP condition was a starting point. It was the first time the Commission placed Indigenous engagement in a licence condition, and it was a meaningful step. But it did not give adequate weight to the MS-WTFNs' voice, and it was not intended to be the end point. Repeating it at PNGS, a long-operating facility on the MS-WTFNs' lands, entering a long-term licence period, would turn a first step into a ceiling.

56. The Commission must not accept the status quo simply because it exists. This is a long-term licence. A condition that is already outdated on the day it is issued will only grow more so as the law continues to develop. *Clyde River* reminds decision-makers that "judicial review is no substitute for adequate consultation."[26] Progress, not stagnation, must define the Commission's approach to Indigenous accommodation.

9. A Binding Condition Serves Canada's Nuclear and Energy Future

57. Canada is expanding its reliance on nuclear energy, including refurbishment at Pickering, the DNNP and potentially Wesleyville New Nuclear Project. Each of these projects is located within the territory of the MS-WTFNs. The durability of that strategy depends on legal certainty and social licence. Approvals resting on inadequate consultation are liable to be quashed, with the delay, redesign and repeated consultation that followed in *Tsleil-Waututh* and *Coldwater*.[27] Lenders, insurers and investors increasingly treat the strength of Indigenous agreements, and the presence or absence of consent, as a material project risk.

58. Indigenous Knowledge also improves safety and environmental outcomes. A human health risk assessment that assumes typical non-Indigenous consumption rates may understate dose to community members who rely on fish and other Relatives in the water, game or plants from the area; Indigenous Knowledge corrects that assumption. A condition requiring its incorporation goes directly to "the health and safety of persons" and to whether OPG's provision is "adequate" under s. 24(4)(b) of the NSCA.

[26] *Clyde River* at para 24.
[27] *Tsleil-Waututh* at para and *Coldwater First Nation v. Canada (Attorney General)* 2020 FCA 34 [*Coldwater*].

59. A binding condition is therefore not a cost imposed on the nuclear sector. It is an investment in its legitimacy. Meaningful partnership with the MS-WTFNs, grounded in law and respect for treaty rights, is how Canada's nuclear future is secured.

Part 3 – Engagement

A. Engagement built on trust is not enough

60. The MS-WTFNs and OPG have spent considerable time building a trusting relationship and goodwill. It has allowed for valuable conversations but not much more. OPG is clear with the MS-WTFNs that their role is not to consult and accommodate, but to engage. The MS-WTFNs have been asked to rely on OPG's goodwill, without truly binding commitments or accommodations. The MS-WTFNs have been here before. At the DNNP, in similar circumstances, the MS-WTFNs relied on that trust. The DNNP condition required OPG only to "conduct Indigenous engagement activities, specific to the DNNP, throughout the licence period". It was a first step in turning the relationship into tangible benefits but from the MS-WTFNs' point of view it had limited success. Experience has proven that trust alone is not enough. The MS-WTFNs intend to do better this time. They ask the Commission to do the same.

B. The parties were not close

61. Prior to and during the hearing, OPG represented to us that the parties were close on the language of Licence Condition G.7 and the LCH. That has not proven to be true, and the parties are too far apart.

62. The consequence is serious. The MS-WTFNs spent valuable time negotiating at cross-purposes, under the impression that the parties were aligned. They were not. Time that should have gone to finalizing a condition, its compliance verification criteria, and the Term Sheet's Enabling Agreement was lost. The Procedural Direction invited submissions on the progress of that work and unfortunately the MS-WTFNs cannot report progress has occurred.

63. The MS-WTFNs' position has been consistent throughout. The Licence Condition is required to ensure that the C3RA outcomes have weight and the MS-WTFNs' perspectives are braiding into the project, where appropriate. This is the accommodation for a regulatory timeline that does not work with the MS-WTFNs' timeline to ensure the communities and leadership truly understand the project and potential rights impacts. The Licence Condition gives the accommodation the force of law. The Term Sheet, and the enabling agreement that implements it, give it operational content. Neither can do the work of the other.

64. There will be no agreement on the licence condition, the LCH, and no enabling agreement, before the record closes at 4:00 pm on 19 November 2026. The Commission should not decide this application on the assumption that those agreements are imminent as our assumptions have been disproven multiple times.

C. The deep-water intake: late information, no accommodation

65. At Part 2 of the hearing, the MS-WTFNs asked the Commission, as an accommodation measure in respect of the deep-water intake (“DWI”), "to make a binding condition of the licence that the DWI be completed as soon as technically possible and before the expiration of the licence."

66. Information on the DWI's construction and in-service timeline was added to the record late in the proceeding. Since then, the MS-WTFNs received an update on 16 November 2026. This timing has not allowed technical review or full consideration of the provided information prior to this submission. The MS-WTFNs therefore do not know what the DWI's potential impacts on their rights will be, or how those impacts should be accommodated.

67. Obtaining information from Fisheries and Oceans Canada (“DFO”) has been no easier. DFO required the MS-WTFNs to submit a request under access to information legislation simply to learn about the DWI. The documents have yet to be provided. Even DFO could not supply the information the MS-WTFNs need.

68. This is the opposite of free, prior and informed. The Declaration requires states to consult and cooperate in good faith "in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources". Consent cannot be informed when the information is withheld. Nor is this how the Crown is to consult with First Nations whose rights are infringed. Meaningful consultation may oblige the Crown to make changes to its proposed action based on information obtained through consultations. That cannot happen where the Crown will not share the information in the first place.

69. How are the MS-WTFNs to make informed decisions, or to advise the Commission, if they are not given the relevant information within the regulatory timelines to begin with?

D. A continuing pattern

70. These are not isolated events. They form a pattern: the July 2026 DWI information requests, which remain unanswered; a scope that continues to shift; and expectations raised and not fulfilled.

71. The pattern reflects a broader problem. The information provided, and the information available, are rarely conducive to First Nations decision-making. The level of detail, the degree of certainty and the timelines imposed do not coincide with the MS-WTFNs' needs or with their own decision-making processes. An Indigenous Engagement Plan is OPG's instrument, designed on OPG's timeline, without binding commitments. It cannot correct this imbalance. A binding licence condition can.

E. Engagement with the CNSC

72. The MS-WTFNs acknowledge, with gratitude, that the CNSC preemptively provided additional participant funding for this supplemental submission, without issue. That support made this submission possible.

73. CNSC staff also met with the MS-WTFNs to discuss the licence condition. It was clear from that meeting, however, that staff were not thinking beyond the status quo. Staff were not willing to hear why the licence condition needs to evolve, only why, in their view, it should not.

74. That is not the posture the law requires. The CNSC acts as an agent of the Crown in discharging the DTCA. Its own approach to the Declaration includes collaborating with Indigenous Nations "on the development of licence conditions." Collaboration means being open to change. The status quo is inadequate and must not be accepted simply because it is easy.

F. Conclusion on engagement

75. Engagement since 9 October 2026 has confirmed what the MS-WTFNs said at the hearing. Trust, without binding commitments, does not protect the MS-WTFNs' rights. Information has been difficult to acquire and not provided freely or early. Representations of alignment have not held. Agreements will not be in place before the record closes. The MS-WTFNs are again being asked to rely on OPG's goodwill.

76. The Commission should not ask them to. The accommodation must be written and binding, and it must sit in the licence itself.

Part 4 - Conclusion

77. The MS-WTFNs are treaty partners, rights holders and governments. They do not appear before the Commission as one stakeholder among many. They appear as the holders of the rights the Crown must accommodate. The Commission acts for the Crown in discharging the DTCA. Binding licence conditions are the means the Supreme Court of Canada has recognized as capable of discharging that duty.

78. The LCH is not an equivalent vehicle: only a licence condition carries the force of law. OPG has already accepted the words proposed, provided they sit in the LCH; its objection is not to what the condition says, but to being bound by it. Engagement since 9 October 2026 has confirmed that trust, without binding commitments, does not protect the MS-WTFNs' rights. No agreement on the licence condition, the LCH or an enabling agreement will be in place before the record closes.

79. The status quo is not adequate and a weak justification; it would not be accepted for Western safety measures and should not be accepted at the peril of the MS-WTFNs own safety. The PNGS relicense is the opportunity to evolve the condition. The MS-WTFNs therefore respectfully ask the Commission to add the following sentence to Licence Condition G.7: "In respect of the Michi Saagiig Anishinaabeg of the Williams Treaties First Nations, the licensee shall incorporate Indigenous Knowledge, as shared and where appropriate, into its policies, procedures and regulatory documents."