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Date: 2026-01-28

**Written Submission from the
Kebaowek First Nation**

**Mémoire de la
Première Nation Kebaowek**

In the matter of the

À l'égard du

**Regulatory Oversight Report for
Canadian Nuclear Power Generating
Sites for 2024**

**Rapport de surveillance réglementaire
des sites de centrales nucléaires au
Canada : 2024**

Commission Meeting

Réunion de la Commission

March 2026

Mars 2026

Canadian Nuclear Safety Commission
280 Slater St.
Ottawa, ON K1P 5S9

January 28, 2026

Sent via email to: interventions@cnsccsn.gc.ca

Re: Comments from Kebaowek First Nation on the Regulatory Oversight Report (“ROR”) for Canadian Nuclear Generating Sites for 2024

Kebaowek First Nation (KFN) welcomes the opportunity to provide its views and recommendations to the Canadian Nuclear Safety Commission (CNSC) in response to CNSC Staff’s “Regulatory Oversight Report for Canadian Nuclear Generating Sites for 2024.”

In providing these written comments, we also request the opportunity to address the Commission at the upcoming ROR meeting scheduled for the week of March 23, 2026.¹

Kebaowek First Nation is an Algonquin Anishinabeg First Nation and one of the eleven communities that constitute the broader Algonquin Nation. For centuries, the Algonquin Nation occupied the length of the Kichi Sibi (Ottawa River) watershed, from its headwaters in north central Québec, all the way to its outlet in Montreal. Algonquin peoples have long exercised our customary laws and governance, known as Ona’ken’age’win, on our traditional territory. This law is based on Algonquin peoples’ mobility on the territory, to hunt, gather, and control the use of the lands and waterways for future generations. The Algonquin Nation has never ceded its traditional territory, and its rights and title have not been extinguished. As Algonquin peoples we regard ourselves as keepers of the land, with seven generations worth of responsibilities for livelihood security, cultural identity, territoriality, and biodiversity.

Our comments are based on our extensive experience with federal regulators and agencies, and involvement in regulatory matters including impact assessments, licensing hearings, project reviews and law reform initiatives. This submission is focused on ensuring that oversight, decision-making and regulatory processes are aligned with our ability to participate in decisions that impact our rights.

¹ CNSC, “[Participant funding for the regulatory oversight reports for the 2024 calendar year](#),” 2025-07-09.

1. UNDRIP, FPIC & KFN'S RIGHTS & RESPONSIBILITIES ASSESSMENT LAW

UNDRIP sets the minimum standards for the survival, dignity, and well-being of Indigenous peoples.²

Through the *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 (“UNDA”), Canada affirmed the Declaration as a universal international human rights instrument with application in Canadian law and that should be implemented without delay.³

The Supreme Court of Canada confirmed that UNDRIP has been incorporated into Canada’s domestic positive law.⁴ The Federal Court and appellate courts have further confirmed that UNDRIP acts as an interpretative lens through which federal and provincial laws must be viewed and the minimum standards against which they are to be measured.⁵

Courts have held that UNDRIP must be given the same weight as a binding international instrument and applies when section 35 rights are engaged.⁶ The federal government, through the UNDA, has endorsed UNDRIP and bound itself to applying UNDRIP and acting in conformity with it. UNDRIP must inform all actions taken under statute, as well as the execution of the duty to consult and accommodate. UNDA’s purposes are to “affirm the Declaration as a universal international human rights instrument with application in Canadian law” and to “provide a framework for the Government of Canada’s implementation of the Declaration.”⁷ The Government of Canada is legally required under section 5 of UNDA to “take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.”

UNDRIP informs the scope of the Crown’s obligations under section 35 of the *Constitution Act*, and requires the Crown to obtain the Free, Prior, and Informed Consent (“FPIC”) of Indigenous Peoples whenever the state propose to store or dispose of hazardous materials on the lands and territories of Indigenous peoples.⁸ UNDRIP further requires states to cooperate in good faith with Indigenous peoples through their own representative institutions and to respect their laws, traditions, and customs.⁹

² *United Nations Declaration on the Rights of Indigenous Peoples*, Art 43 [UNDRIP].

³ *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, ss 2(3), 4(a).

⁴ *Reference re An Act respecting First Nations, Inuit and Metis children, youth and families*, 2024 SCC 5 at 15.

⁵ *Gitxaala v BC (Chief Gold Commissioner)*, 2025 BCCA 430 at 7; *KFN v Canadian Nuclear Laboratories*, 2025 FC 319 at 76; see also *R v Montour*, 2023 QCCS 4154.

⁶ *R c Montour*, 2023 QCCS 4154 at para 1201.

⁷ UNDA, s 4.

⁸ UNDRIP, Art 29.

⁹ UNDRIP, Arts 32(2); see also UNDRIP, Arts 11, 12, 27.

In November 2025, KFN ratified a Rights & Responsibilities Assessment Law which provides a structured process through which the Crown and proponents may obtain KFN's FPIC for physical projects and legislative proposals. The Rights & Responsibilities Law incorporates the standards of UNDRIP and is grounded in Anishinaabe laws, knowledge, and processes.

We require CNSC and the proponents it regulates to adhere to the Rights & Responsibilities Assessment Law and to meet or exceed the standards set out in UNDRIP. Section 5.2(a) of the Rights & Responsibilities Assessment Law affirms that FPIC is not a one-time event, but a process that occurs through the implementation of a project. Under section 20, KFN retains jurisdiction to amend or withdraw its FPIC where a proponent fails to diligently implement FPIC conditions or proposes fundamental changes to the project, or where new adverse effects arise, including where a spill, accident, or malfunction occurs.

As a preliminary matter, KFN has never granted its FPIC for the nuclear generating facilities, activities and projects under review. Our participation in reviewing and providing comments on Regulatory Oversight Reports is an expression of our right of self-government and jurisdiction to ensure that all projects respect our inherent rights and uphold our responsibilities to all of our relations, as stewards and caretaker of the lands.

CNSC must collaborate with KFN respect to its oversight activities and work to achieve consensus on the following matters:

- the assessment of whether licensees have met applicable requirements under the *Nuclear Safety Control Act*, KFN's Rights & Responsibilities Assessment Law, and Canada's international obligations, including UNDRIP; and
- the determination of whether licences should be renewed, suspended in whole or in part, amended, revoked, or replaced based on the proponent's adherence to the licence conditions or the FPIC conditions specified by KFN.¹⁰

As was made clear in *Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025 FC 319, the CNSC must consider UNDRIP and the free, prior, and informed consent standard when assessing whether its duty to consult has been met and must align its processes to reflect KFN's laws, knowledge, and processes, and to work toward achieving agreement.

The UNDA Action Plan commitment #34 sets out the federal government's commitment to support Indigenous participation in decision-making and enable them to exercise federal

¹⁰ *Nuclear Safety Control Act*, SC 1997, c 9, ss 25, 35(3), 37(2)(d) [these sections specify when the CNSC or its delegates may renew, suspend, amend, revoke, or replace licences]

regulatory authority. KFN has raised with the CNSC many opportunities to meet this commitment. The CNSC must ensure KFN can fully participate in decision-making in matters affecting its rights in accordance with KFN's own procedures and based on the principle of free, prior and informed consent.

KFN underscores the importance of meaningful consultation and engagement with its community, emphasizing the need for improved transparency, communication, and collaboration to align industry activities with the laws, knowledge, processes, rights, values, and interests of KFN. CNSC must work with KFN to enhance regulatory oversight while addressing both realized and perceived impacts of the CNSC's operations on communities and the environment.

2. KFN'S EXCLUSION FROM THE "NEW NUCLEAR" PROJECT AT DARLINGTON

The ROR contains significant discussion of the Darlington New Nuclear Project ("DNNP" or "the project"), the selection of the GE Hitachi BWRX-300 reactor, and the regulatory steps leading to the issuance of a licence to construct.¹¹ The ROR further states that the Commission concluded it had fulfilled its constitutional duty to consult and, where appropriate, accommodate Indigenous rights in relation to the Darlington decision.¹² KFN does not believe this to be an accurate statement and takes this opportunity to bring our concerns on this matter to the Commission's attention.

a. KFN's Interest in the Project

KFN has communicated its interest in participating in the licensing and related environmental assessment hearings for the project and in 2023, set out the basis for our interest in our intervenor funding application to the CNSC. As we described:

Kebaowek First Nation is responding to the proposal to review the applicability of the Darlington New Nuclear Project Environmental Assessment and Plant Parameter Envelope for Ontario Power Generation's SMR project because of our continued involvement of nuclear facilities and a similar proposal for new nuclear reactors on Algonquin territory.

Our aim is to ensure the future protection of Aboriginal rights and express relevant opinions, concerns, issues and interests surrounding environmental protection,

¹¹ Regulatory Oversight Report, p 12

¹² *Ibid*, p 13

monitoring, nuclear safety and waste disposal, by participating in hearing events before the CNSC.

Participating in the review of the EA for the new SMR project at Darlington is relevant to our active participation in the environmental assessment review for another demonstration SMR unit, a micro-modular reactor at Chalk River, given the precedent this decision by the CNSC could set for future projects and licensing decisions.¹³

Regrettably, KFN's funding application was denied and subsequent efforts to have the decision reconsidered, also dismissed. We remain concerned about the potential impacts of this project to our rights and given this project's precedential value - as potentially one of the first small modular projects in Canada to be licenced - we continue to communicate our interest in this matter and request that we be fully engaged.

As we have repeatedly raised with CNSC Staff and continue to do so in our semi-regular meetings where we bring this forward as a topic of discussion, we have consistently maintained that KFN has a direct interest in new nuclear projects - whether at Darlington or the Point Lepreau nuclear sites - by virtue of the interconnectedness of the nuclear energy cycle, where fuel produced at one site is relied on by another, and by extension, waste from one site is often disposed or stored at the Chalk River.

And yet, at numerous junctures when KFN has sought to intervene in the licensing hearing for the project at Darlington, we have been denied the capacity supports necessary to do so. We wish to advise the Commission of these discussions and lack of engagement - despite repeated requests to participate - are not mentioned in the text of the ROR nor the short "Update" which follows.

b. Inadequate consultation and accommodation

The CNSC's consultation and accommodation efforts in this project are inadequate and fall short of what is required to uphold the Honour of the Crown. Because of the lack of participant funding, KFN was unable to participate in oral hearings, respond to the licensing and EA documents, present its concerns and evidence, and review material allowing us to fully understand the significance of concessions we are making in light of potential impairment to our rights.

¹³ Application submitted by KFN to CNSC Staff (3 April 2023)

In this instance, the CNSC's regulatory process did not facilitate nor permit adequate inclusion of KFN's rights and responsibilities and further measures - necessary to fulfill the Crown's duty - remain needed.¹⁴

c. Recommended Way Forward

We continue to seek a resolution of our concerns, listed below, and request that they be noted on the hearing record for this project:

- KFN submits that CNSC staff's unilateral scoping decisions and reliance on constrained processes are incompatible with UNDRIP, including Articles 18 and 19. Meaningful participation in decision-making cannot occur where Indigenous Nations are excluded from the outset or denied the resources necessary to engage.
- The ROR's statement that the Commission fulfilled its consultation obligations is inconsistent with KFN's lived experience of exclusion, lack of capacity supports necessary to participate, and absence of meaningful dialogue. KFN emphasizes that rights-holding Nations cannot be excluded through administrative determinations by CNSC Staff. Such unilateral scoping decisions undermine Indigenous rights, reconciliation and meaningful consultation.
- KFN is concerned that Darlington is being treated as a precedent for other "new nuclear" or small modular reactor projects. The ROR references other nuclear projects, such as Bruce C, that are proceeding through integrated Impact Assessment processes. Respecting our right to self-determination requires that KFN be recognized as the authority to decide what projects engage our rights, values, and interests, and when KFN believes there are potential impacts to our Nation, our territory, and our responsibilities to future generations.
- As of 2026, several issues have been raised regarding the selection and ongoing development of the GE Hitachi BWRX-300 SMR. While it has reached significant milestones, including receiving a construction license for the [Darlington New Nuclear Project](#) in April 2025, the following challenges remain:

1. Technical and Safety Concerns

- **Independent Shutdown Systems:** Regulators have questioned whether the reactor's two shutdown systems are truly independent, as both rely on the same control rods.

¹⁴ *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40

- **Containment and Inspection:** Earlier conceptual designs placed the containment structure in direct contact with underground reactor walls, potentially making mandatory periodic inspections for safety-significant areas impossible.
- **Severe Accident Mitigation:** Reviewers identified a need for more detailed analysis regarding severe accidents, specifically addressing the "reverse flow" of steam from containment back into the reactor vessel and the potential ineffectiveness of isolation condensers during certain loss-of-coolant events.¹⁵

2. Economic and Financial Risks¹⁶

- **First-of-a-Kind (FOAK) Costs:** Estimates suggest the first BWRX-300 units could cost more than five times GE Hitachi's original target price.
- **Economic Advantage vs. Large Reactors:** Independent evaluations suggest that building a cluster of BWRX-300 units may not offer a significant competitive advantage over a single large-scale reactor due to the high cost of the underground reactor building.
- **Escalating Decommissioning Costs:** While OPG has provided a letter of credit for decommissioning, critics note that once the reactor starts, neutron activation will make decommissioning far more complex and expensive than initial estimates.

3. Regulatory and Deployment Hurdles

- **Construction Hold Points:** The Canadian Nuclear Safety Commission (CNSC) has imposed three "regulatory hold points" during construction, where work must stop until OPG provides further technical information on unresolved safety issues.¹⁷
- **Unproven at Scale:** The BWRX-300 is a new model not yet in operation anywhere in the world, making its actual performance, construction schedule, and maintenance costs uncertain.
- **Environmental and Waste Concerns:** Unlike Canada's existing CANDU fleet, the BWRX-300 uses enriched uranium and produces different radioactive waste streams that may be more complex to manage.

¹⁵ Online:

<https://www.cnsccsn.gc.ca/eng/reactors/power-plants/pre-licensing-vendor-design-review/geh-nuclear-energy-executive-summary/>

¹⁶ Schlissel, D., & Wamsted, D. (2024). Small modular reactors: still too expensive, too slow and too risky.

¹⁷ Canadian Nuclear Safety Commission, "[Decision by the Commission to authorize Ontario Power Generation Inc. to construct 1 BWRX-300 reactor at the Darlington New Nuclear Project site](#)" (24 April 2025)

3. CLOSING REMARKS

As we have consistently stated, the Commission is responsible for the Honour of the Crown - which means being able to demonstrate that there will be no inequitable, unjust or disproportionate impacts to KFN, our rights and interests. Kebaowek remains committed to constructive, good-faith engagement done in a way that respects our Indigenous jurisdiction, law, and governance.

KFN therefore respectfully requests that the Commission:

- Acknowledge that KFN's exclusion from Darlington project constitutes a failure of meaningful consultation and the Crown's duty to consult
- Direct CNSC Staff to recognize and include KFN as a rights holder in all "new nuclear" discussions and ensure adequate capacity funding is provided to support KFN's full and equitable participation
- Confirm whether our interest in the Darlington project - which has been clearly communicated to the CNSC since at least 2023 - has been conveyed to the project proponent and licensee, OPG