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Canadian Council for  
Aboriginal Business 

Mr. B. Torrie  
Director General, Regulatory Policy Directorate  
Canadian Nuclear Safety Commission  
P.O. Box 1046  
280 Slater Street  
Ottawa, Ontario  
K1P 5S9

Dear Mr. Torrie:

Submission of  
Bruce Power Comments on CNSC REGDOC-3.2.2 Aboriginal Engagement

The purpose of this letter is to submit Bruce Power's comments in regards to CNSC REGDOC-3.2.2 Aboriginal Engagement. Bruce Power is also submitting comments in Attachment A on behalf of its Aboriginal Employees Network (AbNet). Bruce Power notes that some of the comments in Attachment A may not totally align with the company position, however; we strongly feel that it is important that our Aboriginal staff members input is taken into consideration to improve the REGDOC content.

Bruce Power is proud of its Aboriginal relationships and programs and has significant concerns that REGDOC-3.2.2, as currently written, will inadvertently create confusion or misinterpretation among those involved. Specifically, Bruce Power believes the document needs to be restructured to:

- Properly identify that it is the CNSC, acting for the Crown, which has the Duty to Consult with Aboriginal groups.
- Explain how the CNSC would delegate certain aspects of that Duty to Consult to the licensees.
- Provide guidance for Aboriginal groups on how they can participate in the CNSC regulatory process to help them engage with the CNSC and licensees.



The REGDOC currently states its purpose is to identify requirements for CNSC licensees with respect to Aboriginal engagement. Its scope is limited to Aboriginal engagement and communication with the CNSC on those activities and issues. Yet the document appears to essentially delegate all aspects of the Duty to Consult to the licensees. Since this is the Crown's responsibility, Bruce Power does not agree with this approach and believes the document should clearly spell out roles and responsibilities of both the Crown (CNSC) and the proponent (licensee). This should, in a very clear and concise manner, detail what can be delegated to the licensee and provide guidance on how the licensee can fulfill the delegated duties.

It should also contain expectations for communication with the CNSC. On this subject, Bruce Power strongly objects to the submission of agreements with Aboriginal groups since these are highly-confidential documents between licensees and Aboriginal groups that often go well beyond any regulatory engagement activities.

Another concern is the lack of direction needed to identify the scale of engagement. This stems from the fact that the CNSC relies on licensees to determine which Aboriginal groups need to be engaged and then conducts its own analysis after the licensees' analyses are submitted. Respectfully, Bruce Power believes this approach is backwards. While for new projects the licensee or proponent should identify Aboriginal groups whose rights could be impacted, it is the Crown (CNSC) that needs to determine the level of consultation required with each group. Currently, the document treats all Aboriginal groups the same, which may not be appropriate. An example of this issue exists when strong (confirmed) Aboriginal /Treaty rights exist for a particular group while other groups "Assert" Aboriginal Rights. This grows in complexity when more than one Aboriginal group "Asserts" Aboriginal Rights and Aboriginal Rights exist for another group within the same geographic area (traditional territory). The responsibility to identify impact on existing Rights is not simply a proponent responsibility. The Crown and/or Aboriginal group needs to demonstrate the asserted Right.

Bruce Power believes it would also be beneficial to split the document into sections which cover requirements for existing facilities versus requirements for new facilities. This would clarify the level of engagement required for different stages of a facility's lifecycle. Bruce Power notes the CNSC's need to be careful not to place requirements on licensees outside the licensing (licence renewal) process. All licensees currently have Aboriginal Affairs programs to manage on-going relationships with Aboriginal groups that we believe should not be subject to regulatory interference. The fact that Bruce Power is one of only 12 companies in Canada to be awarded a Gold Level from the Canadian Council for Aboriginal Business demonstrates the value we place on our Aboriginal relationships and programs.

We also disagree with the draft REGDOC-2.9.1 being referenced in this document. Bruce Power and other licensees have significant issues with the proposed requirements for Environmental Assessments under the *Nuclear Safety and Control Act* that are contained in this document.



Finally, Bruce Power has concerns with certain statements in the Preface. In particular, we object to the notion of including this REGDOC in the licensing basis of licensee's facilities. While it is understood that Aboriginal engagement is required for federal licensing decisions, this engagement is part of the licensing process, not the licensing basis. We respect the Commission's right to include licence conditions, as required, to ensure Aboriginal rights are addressed. However, this document should be considered a process document, not a licensing basis document. Bruce Power is also concerned with how the CNSC describes guidance in this and other REGDOCs. The description of guidance essentially makes the guidance a requirement that must be met. This description does not match any definition of guidance and needs to be revised.

If you require further information or have any questions regarding this submission, please contact Mr. Maury Burton, Manager, Nuclear Regulatory Affairs, at 519-361-5291 or [maury.burton@brucepower.com](mailto:maury.burton@brucepower.com).

Yours truly,

Frank Saunders  
Vice President Nuclear Oversight and Regulatory Affairs  
Bruce Power

cc: CNSC Bruce Site Office (Letter only)  
C. Moses CNSC Ottawa  
K. Lafrenière CNSC Ottawa

Attach.

**Attachment A**

**Bruce Power Aboriginal Employees Network (AbNet)  
Comments on REGDOC 3.2.2 Aboriginal Engagement**

## Bruce Power AbNet comments on Regulatory Document REGDOC-3.2.2, Aboriginal Engagement

Document section/ excerpt of section	Issue	Suggested change (if applicable )	Major Comment/ request for clarification	Impact if major comment
General	Supreme Court of Canada decisions have held that it is the duty of the crown to consult. Requiring certain proponents to carry out consultations does not relieve the Crown of its duty to consult with aboriginal peoples of Canada.	REGDOC 3.2.2 needs to fully recognize the duty of the Crown to consult and clearly describe the process to be implemented by the Crown when carrying out consultation.	<b>MAJOR</b>	<p>The role of industry needs to be a supporting role with respect to Aboriginal Engagement. Fostering strong, healthy relationships with aboriginal communities in the area of a proponent's potential operation is good for both the proponent and the aboriginal communities.</p> <p>The roles and responsibilities of proponents need to be defined such that the duty of the Crown to consult with aboriginal peoples is carried out.</p>
Section 1.2	The statement, "[t]his document applies to regulated facilities and activities described in the <i>Class I Nuclear Facilities Regulations</i> and the <i>Uranium Mines and Mills Regulations</i> " may imply that the only activities requiring consultation are those in the scope of the referenced regulations.	<p>It is recommended that the purpose of the document be clarified.</p> <p>If the purpose of the document is to prescribe the support activities to be completed by proponents such that the CNSC can fulfill the duty of the Crown to consult then it is possible that no change is required.</p> <p>If the purpose of the document is different the scope of the REGDOC needs to be expanded accordingly.</p>	Request for Clarification	

<p>Section 1.3</p> <p>This section references subsection 3(1.1) of the General Nuclear Safety and Control Regulations regarding the submission of "any other information that is necessary" for the CNSC to determine that the proponent is qualified. The scope of the REGDOC, however, outlines the process to be used by a proponent for aboriginal consultations.</p>	<p>Require proponents to submit a copy of their Aboriginal Consultation program or process for review by the Commission as part of the licensing process.</p>	<p><b>MAJOR</b></p> <p>The behaviours and processes of the proponent following issuance of a licence are at least as important as the process used to obtain that licence – possibly more important.</p> <p>Having a strong, effective aboriginal program will assist licensees in developing and maintaining relations with aboriginal communities. This will be a benefit to the proponent in future applications.</p>
<p>Section 1.3</p> <p>This section references section 35 of the Constitution Act. As it is the duty of the Crown to consult, it is not clear how this legislation is relevant given the focus of the REGDOC on the activities of the proponent.</p>	<p>Delete the reference to section 35 of the Constitution Act.</p>	<p><b>MAJOR</b></p> <p>Including reference to section 35 of the Constitution Act – either by implication or otherwise – that proponents have a duty to consult with Aboriginal peoples. Proponents are required to "inform persons living in the vicinity of the site" in accordance with the Class I Nuclear Facilities Regulations.</p> <p>Referencing the Constitution Act appears to place a duty on proponents that actually rests with the Crown.</p> <p>Additionally, there is no provision in the REGDOC to give proponents the authority to make agreements on behalf of the Crown.</p>

Section 2	<p>This section refers to “commitments to uphold the honour of the Crown, through relationship building and information sharing...” The REGDOC contains little or no substantive information regarding how the CNSC will be involved in Aboriginal Consultation. This could actually hinder the stated objective of upholding the honour of the Crown since the proponent is put in a position having all of the responsibility of consultation, but none of the authority to make commitments to accommodate.</p>	<p>The CNSC needs to be an active participant in Aboriginal Consultations rather than passing responsibilities on to proponents.</p>	<p><b>MAJOR</b></p>	<p>Proponents could potentially find that relationships with Aboriginal communities are in decline due to unclear roles and responsibilities in the proposed REGDOC. For some aboriginal people, it will be another example of the Crown's failure to recognize aboriginal and treaty rights by attempting to delegate their responsibility to a third party.</p>
Section 2, Table 1 Section 3.2.1, Key Facts to consider	<p>No methodology is presented in the REGDOC as to how the potential for adverse impacts is to be assessed. There is a high likelihood that the potential for adverse impacts from the perspective of aboriginal peoples will be very different than from the perspective of proponents.</p>	<p>Pre-consultation activities need to include information exchange regarding the values, beliefs, and evaluation of impacts from the perspective of aboriginal peoples in the specific land area where licensed activities are proposed to occur.</p>	<p><b>MAJOR</b></p>	<p>This will require proponents to identify and meet with aboriginal peoples prior to consultations. Adequate time needs to be allotted to effectively complete pre-consultation activities.</p>

Page 6	<p><i>Summary of Aboriginal engagement activities to date</i></p> <ul style="list-style-type: none"> <li>The proposal may adversely impact an Aboriginal group...</li> </ul> <p>How can a proponent identify if, and by how much, a proposal will adversely impact an Aboriginal group without carrying out aboriginal consultation?</p>	Please clarify.	Request for clarification
Section 3.6	<p>Non-applicability statement provided is unclear. Is the list of examples in 3.6.1 complete?</p>	<p>Revise 3.6 to state all types of facilities or activities that do not require submission of an Aboriginal engagement plan.</p> <p>Also include the basis for non-applicability (i.e. why would certain licensees not have to submit an Aboriginal engagement plan?)</p>	<p><b>MAJOR</b></p> <p>The lack of clarity in this section results in a situation where proponents/licensees may not know what is expected of them.</p>
Appendix A	<p>What aboriginal input was obtained prior to drafting the list in Appendix A? Is the draft REGDOC review and comment process intended to capture all aboriginal consultation with respect to the REGDOC and its contents?</p>		Request for clarification



Appendix A	The considerations use the phrase "are you aware..." on a number of occasions. The proponent's awareness of a particular activity does not correlate to the occurrence of that activity.	The use of the considerations appendix should be explained more thoroughly. It is possible that Aboriginal activities in an area may not be well known by proponents.  Aboriginal consultation may be missed or delayed as a result.	<b>MAJOR</b>	Late or missing aboriginal consultation could cause significant delays to projects or other proposed activities.
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