



**Supplementary Information
from CNSC Staff**

**Renseignements supplémentaires
du personnel de la CCSN**

In the Matter of the

À l'égard d'

Ontario Power Generation Inc.

Ontario Power Generation Inc.

Application for a licence to construct one BWRX-300 reactor at the Darlington New Nuclear Project Site (DNNP)

Demande visant à construire 1 réacteur BWRX-300 sur le site du projet de nouvelle centrale nucléaire de Darlington (PNCND)

**Commission Public Hearing
Part-2**

**Audience publique de la Commission
Partie-2**

January 8-10 and 13-14, 2025

8-10 et 13-14 janvier 2025



To
À Candace Salmon, Commission Registrar
Commission Registry

From
De Sarah Eaton, Director General
Directorate of Advanced Reactor Technologies
Canadian Nuclear Safety Commission

Security Classification - Classification de sécurité
UNCLASSIFIED
Our File – Notre référence
e-Docs #7438956 (word)
Date
January 10, 2025

Subject
Objet Response to Commission undertaking related to the Michi Saagiig Nations request for Licence Conditions and compliance verification criteria for the DNNP LTC draft Licence Condition Handbook

Introduction and discussion

On January 8, 2025 (the first day of Part II of the CNSC Commission Public Hearing for Ontario Power Generation Inc.: Application for a licence to construct one BWRX-300 reactor for its Darlington New Nuclear Project), the Michi Saagiig Nations submitted a letter to the Commission Registry outlining a request for two new Licence Conditions and compliance verification criteria (CVC) for the DNNP LTC draft Licence Condition Handbook (LCH). The proposed language was developed collaboratively by OPG and Alderville, Curve Lake, Hiawatha and the Mississaugas of Scugog Island First Nations (the Michi Saagiig Nations) that are signatories to the Williams Treaties.

The CVC for the LCH proposed by the Michi Saagiig Nations are as follows:

Condition #1 : In order to assist the Crown in meeting its obligation to consult and, if appropriate, provide accommodations to the Michi Saagiig Nations in connection with future authorizations for the Project (including a Licence to Operate), OPG will engage with the Michi Saagiig Nations with the mutual goal of negotiating reasonable agreements for the Darlington New Nuclear Project (DNNP) which will include appropriate accommodations in connection with the Project. The Michi Saagiig Nations shall not unreasonably withhold their consent to future Canadian Nuclear Safety Commission authorizations for the Project (including a Licence to Operate) with such consent to be given through a binding Project Agreement. Accommodations within the binding Project Agreement may include, but not be limited to, participation in environmental monitoring, annual waste reviews, potential establishment of a long-term ecological restoration fund, instrument to protect the Beneficial Actions Areas, aquatic offsetting and terrestrial restoration, economic development opportunities and the support for an Indigenous Knowledge Study and its ongoing incorporation into all project phases of DNNP and unit operations.

Condition #2 : In order to fulfill the procedural aspects of the duty to consult in connection with future Provincial authorizations for the Project (which have been delegated to OPG by the Province of Ontario), including in particular the potential issuance by the Ministry of Natural Resources of a land use easement for the Lake Ontario lake bed, OPG shall engage with the Michi Saagiig Nations with the mutual goal of negotiating reasonable agreements which will include appropriate accommodations in connection with the construction and long term operation of a new Condenser Cooling Water Structure in Lake Ontario. The Michi Saagiig Nations shall not unreasonably withhold their consent to future Ministry of Natural Resources lakebed land use authorizations for the Project with such consent to be given through a binding agreement for the construction and long term operation of a new Condenser Cooling Water Structure in Lake Ontario.

Recommendation

In response to this request, CNSC staff are proposing updates to the draft LCH CVC for LC 15.4 in an effort to address the Michi Saagiig Nations requests, while ensuring that the requirements and expectations of OPG remains within the CNSC's mandate and authorities for compliance and oversight.

CNSC staff acknowledge the Michi Saagiig Nations request the CNSC confer with the Michi Saagiig Nations and OPG jointly, should their wording not be acceptable, to arrive at alternative language that can be supported by all parties. CNSC staff are committed to continued engagement with the Michi Saagiig Nations on the LCH CVC for LC15.4 with the goal of coming to a consensus on the proposed language. CNSC staff will be sharing the updated language for the draft LCH for LC 15.4 with the Michi Saagiig Nations for review, comment and feedback. CNSC staff remain open to meeting with the Michi Saagiig Nations to discuss the proposed language further.

The proposed updates to the draft LCH CVC for LC 15.4 are represented by yellow highlights below.

2025-01-10

X SJ Eaton

Sarah Eaton, Director General

Directorate of Advanced Reactor Technologies

Signed by: Eaton, SarahJane

DRAFT DNNP SITE-SPECIFIC LCH CONDITION FOR INDIGENOUS ENGAGEMENT

Licence Condition:

The licensee shall conduct Indigenous engagement activities, specific to the DNNP, throughout the period of this licence.

Preamble:

As per Section 8(2) of the *Nuclear Safety and Control Act*, the Commission is an agent of the Crown. As such, the Commission has the obligation to fulfil the Duty to Consult and, where appropriate, accommodate, Indigenous peoples when the Crown contemplates conduct that might adversely impact potential or established Indigenous and/or treaty rights. In meeting its obligations towards Indigenous Nations and communities, the Commission may rely on Consultation undertaken by CNSC staff as well as the opportunities for Indigenous Nations and communities to make submissions directly to the Commission and to participate in the hearing process. To assist the Commission in meeting its duty to consult and, where appropriate, accommodate, the Commission may also rely on the engagement work of licensees. This includes consideration of measures to avoid or mitigate potential adverse impacts or other measures adopted or proposed by licensees for potential accommodation purposes.

A public information and disclosure program is required by the *Class I Nuclear Facilities Regulations*, which requires that licensees describe and maintain a program to inform persons living in the area of the site of the nature and characteristics of the anticipated effects of the activity on the environment, as well as on the health and safety of persons. REGDOC-3.2.1 - *Public Information and Disclosure* also specifies that Indigenous Nations and communities should be included as a target audience for the licensee's public information and disclosure program.

As per section 6 of REGDOC-3.2.2 – *Indigenous Engagement*, licensees may be required to continue to engage Indigenous Nations and Communities after an Environmental Assessment or licensing decision. Licensees may also be required to update the CNSC about their ongoing Indigenous engagement activities—for example, the status of the implementation and effectiveness of mitigation and accommodation measures. Licensees may also be required to update the CNSC on new issues raised by Indigenous Nations and Communities with respect to an adverse impact on potential or established Indigenous and/or Treaty rights, and any related interest, which could affect future operations of the regulated facility or future licence application.

Compliance Verification Criteria:

The licensee shall conduct ongoing engagement specific to the DNNP with the identified Indigenous Nations and communities with Indigenous and/or Treaty rights in the area of the DNNP and those who have expressed interest in the DNNP, throughout the licence period. If an Indigenous Nation and/or community is non-responsive, the licensee shall continue to share information and provide opportunities for engagement, unless the Indigenous Nation and/or community specifically declines the engagement opportunities and requests that the licensee stop sharing information regarding the DNNP.

The DNNP is located within the Williams Treaties territory. In order to support fulfilling the Duty to Consult, and where appropriate, accommodate, the licensee shall continue to collaborate and engage with

the Michi Saagiig Nations of the Williams Treaties First Nations on the specific commitments and accommodations made throughout the regulatory review process. This includes, but is not limited to:

- Scoping the extent, timing and content of an Indigenous Knowledge Study.
- Scoping the extent, timing and content of a Cumulative Effects Study.
- Scoping the extent, timing and content of an Environmental Monitoring Augmentation Program and participation in OPG's environmental monitoring.
- Ongoing review of international best practices for the management and storage of used nuclear fuel, in relation to the current practices at the Darlington site.

The licensee, in collaboration with the Michi Saagiig Nations, shall incorporate the outcomes of these studies, where appropriate, into the licensee's Environmental Monitoring and Environmental Assessment Follow-Up Plan. The licensee shall include an update on any progress made on these specific commitments in its report on the engagement activities (as described below). The report shall include any relevant information and context regarding the current status of, timelines, and progress made on the agreed upon studies and commitments.

The licensee shall file with the CNSC annually a report on the engagement activities specific to the DNNP it has undertaken with potentially impacted or interested Indigenous Nations and communities. The deadline for submission of this report shall be the first of May of each calendar year. The licensee should also provide a copy of the report to each Indigenous Nation or community engaged in advance or at the same time it is filed with the CNSC. It is acknowledged that an Indigenous Nation or community may share information with the licensee in confidence. The licensee is not required to put confidential information in its annual reporting to the CNSC. The licensee should work with the Indigenous Nation or community to ensure this information is not disclosed and the Indigenous Nation or community is comfortable with the level of detail communicated within the report.

Each report shall include, at a minimum, and for each Indigenous Nation and community engaged:

- The name of the Indigenous Nation or community.
- The method(s), date(s), location(s), and topics of engagement activities with the Indigenous Nation or community.
- A summary of any issues, interests, or concerns raised, including those in relation to any potential impacts on identified or established Indigenous and/or Treaty rights.
- The measures taken, or that will be taken, to address or respond to the issues or concerns. Alternatively, an explanation as to why no further action is required to address or respond to issues or concerns shall be provided.
- A description of any changes to project activities and/or programs to address and incorporate the measures taken to respond to issues or concerns, or to incorporate knowledge and feedback from Indigenous Nations and communities.
- The status of the implementation of the agreed-upon studies and commitments (see items 1 through 4 above) to address concerns raised with respect to the LTC application.
- An update on engagement conducted related to the progress on regulatory hold points

- An update on the status of and engagement conducted related to the aquatic offsetting, terrestrial restoration, beneficial action areas and provincial authorizations related to the potential issuance of a land use easement for the Lake Ontario lake bed.

In addition, OPG shall:

- Provide an update on the following in the above-described report to the CNSC:
 - The status of mitigations contemplated, and progress made on a project agreement between OPG and the Michi Saagiig Nations in relation to the DNNP
- Participate in the proposed oversight and monitoring working group with CNSC staff and the Michi Saagiig Nations to collaborate on progress being made on CNSC and OPG’s commitments to Michi Saagiig Nations. This may include discussions and engagement on issues or concerns raised by the Michi Saagiig Nations in relation to the implementation of OPG’s and CNSC’s commitments to ensure that the Nations’ rights and interests continue to be protected, and the commitments are upheld. The details of the working group and its structure will be developed collaboratively between CNSC staff, the Michi Saagiig Nations and OPG. The working group would include collaboration between CNSC staff, the Michi Saagiig Nations and OPG on the contents of the annual reports to the Commission which would include an update on the implementation of CNSC and OPG commitments and engagement through the working group, in relation to the DNNP.

Licensing Basis Publications

Document Number	Document Title	Version	Effective Date
REGDOC-3.2.2	Indigenous Engagement	V1.2	31 December 2022

Licensee Documents that Require Notification of Change

Document Title	Document #	Prior Notification
None		

Recommendations and Guidance:

In conducting its engagement activities, the licensee should consider the guidance provided throughout REGDOC-3.2.2 - *Indigenous Engagement*.