



**Written submission from the
Kebaowek First Nation**

**Mémoire de la
Première nation de Kebaowek**

In the Matter of

À l'égard de

**Decision on the scope of an environmental
assessment of the proposed Micro Modular
Reactor Project at the Canadian Nuclear
Laboratories Ltd., in Chalk River**

**Décision sur la portée de l'évaluation
environnementale pour le projet de
microréacteur modulaire aux Laboratoires
Nucléaires Canadiens Itée, à Chalk River**

Hearing in writing based on written
submissions

Audience par écrit fondée sur des mémoires

June 2020

Juin 2020

**SUBMISSION BY KEBAOWEK FIRST NATION
TO THE CANADIAN NUCLEAR SAFETY COMMISSION ON THE
SCOPE OF FACTORS FOR GLOBAL FIRST POWER'S MICRO MODULAR
REACTOR ENVIRONMENTAL ASSESSMENT
CEAA REFERENCE NO. 80182**

01 JUNE 2020

NOTE

This document is the final version of the submission of the Algonquin Nation of Kebawek adopted by the Chief and Council the 1st of June 2020.

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Letter Attachments

May 14, 2020 KFN to Prime Minister Trudeau re:
Canada's Need for an Overarching Indigenous Cooperation Agreement with
the Algonquin Nation for Chalk River Nuclear Site Proposed Development

1. FOREWARD

This report is submitted by the Algonquin First Nation of Kebaowek who wish to intervene in response to the Canadian Nuclear Safety Commission's (CNSC) Updated Public Notice dated March 24, 2020, inviting comments on the proposed scope of factors to be considered in the environmental assessment of Global First Power's Micro Modular Reactor Project (herein, "small modular reactor" or "SMR") at Chalk River.¹

We are encouraged that the project has been "designated" for an environmental assessment and welcome the opportunity to comment on the scope of factors to be considered. Before starting, for the record Kebaowek First Nation (herein, "KFN") would like to address some procedural concerns about the conduct of CNSC's engagement with our Nation in this consultation and the future environmental assessment.

The proposed Global First Power SMR project is located within, and has the potential to significantly affect Kebaowek First Nation and Algonquin Nation rights and title territory. KFN is extremely concerned that the proposed SMR nuclear project is a "test" project on Algonquin territory, and therefore a precedent setting one requiring the highest standards of Indigenous engagement and environmental assessment.

It is our understanding, the Government of Canada has committed to achieving reconciliation with Indigenous peoples through a renewed nation-to-nation, government to government relationship between Canada and Indigenous peoples based on recognition of rights, respect, co- operation and partnership as the foundation for transformative change.

KFN participated actively in the federal environmental law reform process since consultations began in 2016. We have contributed written and oral submissions to the Canadian Environmental Assessment Act (CEAA) Expert Panel, the National Energy Board (NEB) Expert Panel, the federal Discussion Papers, and presented on amending Bill C-69 to the House of Commons Standing Committee on Environment and Sustainable Development (ENVI).

Like many other First Nations across Canada our interventions have often focused on ensuring that the review process and impact assessment regime for energy and industrial projects are aligned with our ability to participate in decision-making regarding industrial activities that impact our rights and to provide protections for our lands and waters. For this reason, the Impact Assessment Act 2019 and forward regulatory plan are of great importance to our community.

¹ Canadian Nuclear Safety Commission, "Revised Notice of Participant Funding and an Opportunity to

On May 31, 2019 KFN in consultation on regulations being developed for the Canadian Impact Assessment Act (IAA) through Bill C-69, namely, the Regulations Designating Physical Activities (the "Project List Regulation") recommended that constructing, operating or dismantling SMRs be included in the project designation list under the new IAA.

While the CNSC provided advice to the federal government on which nuclear projects should be designated (or not) in February 2019, the President did not disclose whether the CNSC believes that SMRs should be subject to the IAA process.² However, in 2018 CNSC advocated for SMRs to be excluded from the forthcoming IAA in a meeting between the CNSC President and a nuclear license holder.³ Greg Rickford, Ontario's Minister of Energy, Northern Development and Mines, praised SMRs and recommended that all "nuclear energy projects should be outside the purview of Bill C-69," and should instead remain subject only to the regulatory control of the CNSC.⁴

On August 28, 2019, the Impact Assessment Act (IAA) came into force, repealing the Canadian Environmental Assessment Act, 2012 (CEAA 2012). On August 28, 2019, KFN requested to then Minister Catherine McKenna that the Global First Power SMR should comply to the new legislation where impact assessments of nuclear activities are referred to a review panel. KFN was not aware that KFN's regulatory recommendation that constructing, operating or dismantling SMRs be included in the project designation list was not fulfilled under the new IAA.

On August 29, 2019, CNSC wrote to Global First Power Ltd. regarding implications of legislative changes to the project explaining that since the SMR EA commenced under CEAA 2012 on July 15, 2019 that subsection 182 of the IAA would apply in that, "Any environmental assessment of a designated project by the Canadian Nuclear Safety Commission or the National Energy Board commenced under the 2012 Act, in respect of which a decision statement has not been issued under section 54 of the 2012 Act before the day on which this Act comes into force, is continued under the 2012 Act as if that Act had not been repealed."⁵

On November 7, 2019 KFN presented comments on the CNSC's Regulatory Oversight Report for Canadian Nuclear Power Generating Sites before the Canadian Nuclear Safety Commission.⁶ KFN suggested a nation-to-nation relationship between the Canadian Nuclear Safety Commission and Algonquin communities is something that urgently needs to be structured. This would include regrouping on the environmental assessment processes that are currently going on under previous pieces of legislation.

² Evidence (February 7, 2019): <https://sencanada.ca/en/Content/SEN/Committee/421/enev/54526-e>.

³ Reference: Blaise, K. and Stensil, S-P. (2019) "Small Modular Reactors in Canada: Eroding Public Oversight and Canada's Transition to Sustainable Development," Manuscript, In: Black-Branch J., Fleck D. (eds) Nuclear Non-Proliferation in International Law, Volume V

⁴ 30 Evidence (February 26, 2019): <https://sencanada.ca/en/Content/SEN/Committee/421/enev/54565-e>.

⁵ <https://iaac-aeic.gc.ca/050/documents/p80182/132631E.pdf>

⁶ E-DOCS-#6046296-v1-Public_Meeting_Transcript_of_November_7__2019.PD

KFN requested that the Commission enters into a consultation, conflict and collaboration analysis that could potentially lead to a consultation framework agreement between our community and other members of the Algonquin Nation. The President, asked Adam Levine CNSC Team Leader of Indigenous Relations and Participant Funding to respond.

Mr. Levine responded that CNSC is “absolutely committed to working with Kebaowek and the other Algonquin Nations on establishing a meaningful nation-to-nation relationship” that CNSC are, “very happy to see Kebaowek getting involved in CNSC regulatory processes and we're going to start sitting down in the coming weeks to map out where we're at in these different ongoing environmental assessments that they're interested in and to make sure that the process moving forward is meaningful for them and that they're able to have their concerns heard and that their rights and interests are reflected in the work that we do.” Unfortunately, these words have not come into fruition.

On May 14, 2020 KFN and the Algonquin Anishinabeg Nation Tribal Council (AANTC) wrote the Prime Minister expressing deep concern about Canada's Need for an Overarching Indigenous Cooperation Agreement with the Algonquin Nation for Chalk River Nuclear Site Proposed Developments. Particular attention was focused on CNSC recent “Failing to Support Meaningful Indigenous Participation in the Global First Power SMR EA”. (Letter provided for reference as Attachment A.)

As noted in our letter:

We will not accept these meager or discretionary consultation methods by the CNSC given the scale and importance of these environmental assessments and potential impacts. As such, **we request that the environmental assessment of the Global First Power Micro Modular Reactor project, including the upcoming June 1, 2020 deadline for interventions at the hearing be suspended until adequate provisions for Indigenous cooperation with our Nation are in place** [emphasis added].

It is important to note that in order to safeguard the need for an Overarching Indigenous Cooperation Agreement for the Global First Power SMR that the following comments are recorded as a consultation under protest and this submission can not nullify any of our positions, claims, actions or territorial negotiations in any way whatsoever. These comments do not constitute consultation in away, nor discharge the Crown’s duty to consult per section 35 of the *Constitution Act, 1982*.

2. ALGONQUIN COMMUNITY AND NATION PORTRAIT

The Algonquin Nation is made up of eleven distinct communities recognized as Indian Act bands. Nine are based in Quebec and two are in Ontario. The Algonquin Anishinabe Nation Tribal Council is comprised of six Algonquin first nations: Kebaowek, Long Point, Kitigan Zibi, Lac Simon, Abitibiwinni and Kitcisakik. The Algonquin Nation has never given up aboriginal title or jurisdiction to our traditional territory. This includes all the lands and waterways within the Ottawa River watershed on both sides of the Ontario-Quebec border. Aboriginal title is held at the community level within the Algonquin Nation where we assert unceded aboriginal rights including title under Section 35 of the Canadian Constitution.

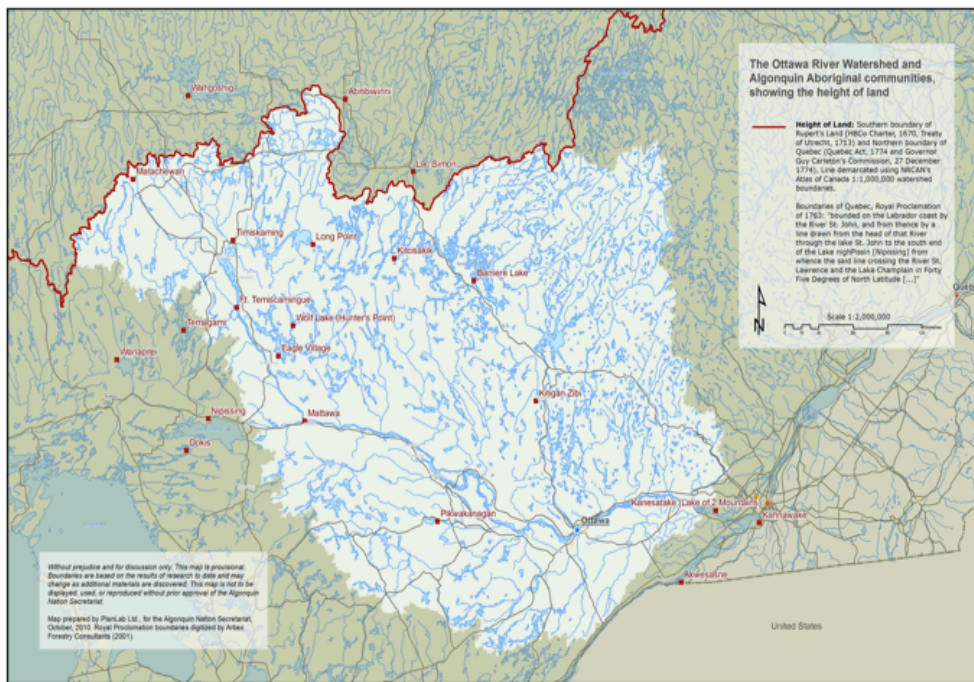


Figure 1: The Ottawa River Watershed and Algonquin Communities

Inherently, our lands and waters are part of the Anishinaabe Aki a vast territory surrounding the Great Lakes in North America. For centuries we have relied on our lands and waterways for our ability to exercise our inherent rights under our own system of customary law and governance known to us as Ona'ken'age'win. This law is based on mobility around the landscape, the freedom to hunt, gather and control the sustainable use of our lands and waterways for future generations.

Algonquin social, political and economic organization was based on watersheds, which served as transportation corridors and family land management units around the Ottawa River Basin. Algonquins occupy the

entire length of the Kichi Sipi or Ottawa River (which literally translates as "big river") from its headwaters in north central Quebec to the sacred sites at Bird Rock, across from Chalk River Nuclear Facility, and Akikodjiwan, Chaudière Falls in Ottawa and all the way out to its outlet in Montreal.

Our ancestors never contemplated our lands and waterways to be obstructed or industrial. Nor has government legislation ever adequately protected our lands and waterways. When the Government of Canada initiated the installation of nuclear facilities at Chalk River, no assessments were undertaken to determine how these nuclear installations might affect Algonquin peoples.

Kebaowek First Nation is made up of 999 members. KFN asserts its Aboriginal rights and title over our traditional territory which is located in present-day Ontario and Quebec. Kebaowek First Nation reserve lands are on Lake Kipawa in Quebec. The main Reserve and band office is located fifteen kilometres from the Ontario-Quebec border and KFN has a band office in Mattawa, Ontario, one hundred and twenty three kilometres from the proposed SMR at the Chalk River Nuclear site.

Four hundred and twenty-eight members live off reserve in Ontario. The Nation's mandate is to support community members to continue to occupy, manage, safeguard and intensively use Algonquin territory lands and waterways as they carry out traditional and contemporary activities. All such initiatives are based on a community model of self-determination and a history of Algonquin culture, language, traditional knowledge, eco-logical sustainability and land governance.

On January 23, 2013, Kebaowek First Nation (KFN), Wolf Lake First Nation (WLFN) and Timiskaming First Nation (TFN) jointly released a Statement of Asserted Rights (SAR) which summarizes the Aboriginal rights, including title, which our three First Nations assert and provides detailed evidence to substantiate it including around the Chalk River nuclear site. Copies of the SAR, maps and background documentation were transmitted to the governments of Canada, Quebec and Ontario in January 2013. In summary, our First Nations have not relinquished Aboriginal rights and title, over lands that straddle the Ottawa River basin on both sides of the Quebec-Ontario boundary. The importance of this information in establishing consultation processes and the responsibilities of the Crown are affirmed by existing case law.⁷

As was raised by KFN before the CNSC commission on November 7, 2019 Algonquin peoples are not to be referred to as an Indigenous "group". Algonquin peoples do not consider themselves a group, but a Nation with rights both inherent and protected under the Canadian Constitution

⁷ Haida Nation v. British Columbia (Minister of Forests) <http://scc.lexum.umontreal.ca/en/2004/2004scc73/2004scc73.html>, Taku River Tlingit First Nation v. British Columbia (Project Assessment Director) <http://scc.lexum.umontreal.ca/en/2004/2004scc74/2004scc74.html>, Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage) <http://scc.lexum.umontreal.ca/en/2005/2005scc69/2005scc69.html>.

Section 35.⁸

Kebaowek First Nation does not endorse, accept or acknowledge any claims to any Aboriginal or Treaty Rights made by the Algonquins of Ontario (AOO). KFN would classify that entity as a group without Section 35 rights. AOO in its current form is not representative of a legal or historical Aboriginal people as recognized by Section 35 of the Constitution Act of 1982. Pikwakanagan and Ardoch are the only Aboriginal communities with Section 35 rights. Though we take no position as to whether the representatives of Snimikocha(ph) Ardoch within the AOO represent the Algonquin Ardochs.

Furthermore, the Métis of Ontario include collectives that are not representative of any legal or historical Aboriginal people. For example, there is no historical Métis community in Mattawa. The Indigenous people of Mattawa were Algonquin and are ancestors of Kebaowek First Nation.

Canada has an obligation to recognize and respect the sovereignty of Algonquin peoples who have maintained their social, cultural, and political identity in this SMR consultation. The Algonquin Nation exercises responsibility for determining citizenship within the "Algonquin Nation". In recent years, the decision making process used by Canada to resolve land claims with "groups" not representative of a legal or historical Aboriginal people as recognized by Section 35 of the Constitution Act of 1982 has been widely criticized within the Algonquin Nation. In order to ensure confidence in the Crown consultation process and decisions pertaining to Algonquin Nation recognition, it is necessary to reform the present consultation process and list of Indigenous groups being consulted.

It is KFN's recommendation to Canada and the CNSC to look beyond the NSCA itself and take into account other pieces of policy that are intended to further weaken Algonquin peoples' capacity to participate in a fair and equitable resource development review process. (Comprehensive Claims Policy, CEEA 2012, Fisheries Act, Navigation Protection Act, Indian Act). These pieces of legislation combine as an assault on Algonquin sovereignty and the protection of land, air and water. The cumulative policy effect effectively has the power to silence our peoples as resource development proceeds as planned.⁹ Algonquins cannot accept inequitable distribution or limited role of actual Algonquin peoples in consultations on our own unceded territories.

3. ADVANCING ALGONQUIN CONSULTATION

In light of the above, how does Canada and CNSC begin to meet the consultative expectations of Kebaowek and the AANTC? The starting point must be in recognizing that Algonquins, like all First Nations in Canada,

⁸ E-DOCS-#6046296-v1-Public_Meeting_Transcript_of_November_7_2019.PD

⁹ Kirchho, D., Gardner, H. L., Tsuji, L. J. (2013). e Canadian Environmental Assessment Act, 2012 and Associated Policy: Implications for Aboriginal Peoples. e International Indigenous Policy Journal, 4(3). Retrieved from: <http://ir.lib.uwo.ca/iipj/vol4/iss3/1>

began with both rights to their territories and rights as people governed under customary laws. As Roark-Calnek ¹⁰ explains, “Mutuality, respect and consultation are integral to Algonquin social and political organization on a number of levels: family to family, band to band, and nation to nation. From an Algonquin perspective, the current consultation process should be harmonized with that expectation”.

Because of this history, AANTC has told the Government of Canada that the answer lies in coming together under a meaningful consultation protocol – one that allows both parties to speak on a government-to-government basis. KFN believes that the current environmental assessment process will need to be amended as part of an Indigenous Cooperation Agreement in order to carry out the review, considering matters raised in the Federal Environment Minister’s mandate letter and the mandate letter of the Federal Minister of Indigenous and Northern Affairs and Natural Resources Canada.

We understand the Federal government promised a “renewed relationship with Canada’s Indigenous communities” and this will require both difficult conversations and policy changes.

The UN Declaration includes a number of articles that recognize the need for a dominant state to respect and promote the rights of its Aboriginal peoples as affirmed in treaties and agreements, including how Aboriginals participate in decision-making processes that affect their traditional lands and livelihoods (UNDRIP, 2007). The concept of free, prior, and informed consent promoted by the United Nations is of paramount importance in terms of decision-making. For example, article 18 mentions that,

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedure, as well as to maintain and develop their own indigenous decision-making institutions. (p. 6)

Moreover, article 32 (2) of the UN Declaration states:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water and other resources. (p. 9)

We encourage Canada and the CNSC, by way of its EA and licensing decisions, to meaningfully improve its environmental review practices and approaches in order to align and emulate these international agreements and their principles.

¹⁰ Roark-Calnek, Sue. 2013. Cultural Impacts Assessment. Document prepared for Wolf Lake First Nation and Eagle Village First Nation-Kipawa, Quebec.

We also bring to your attention a landmark verdict in 2015 where judges of Den Haag (The Hague) District Court ruled that the government of the Netherlands had a legal obligation to act in the best interests of current and future generations by lowering its CO2 emissions. For the first time, a court had established a “duty of care” towards future citizens in matters of climate policy.¹¹ Also a groundbreaking judgment in Seattle USA last fall ruled that the State of Washington had a constitutional obligation and public trust duty to preserve, protect, and enhance air quality for current and future generations.¹²

The rise—and success—of these International and environmental law precedents supports Anishnabe seven generation customary law. The precedents sent by such litigation challenges short-term thinking adopted in Canada and underscores the need to consider the long-term consequences of poor policy and legislative decisions. Today, we are asking the CNSC to recognize these principles within the proposed SMR assessment in order to advance what the CNSC has historically recognized as “appropriate” within its CEAA 2012 and the NSCA decision making authority.

3.1 SPECIFIC CONSULTATION RECOMMENDATIONS

The following considerations are intended to serve as general advice on the incorporation of our communities’ cultural, environmental and social related inputs into future consultation and impact-assessment procedures with your agency. The information is intended for use in conjunction with evolving environmental impact assessment discussion with CNSC and IAAC as well as the need for an Indigenous Cooperation Agreement and environmental assessment consultation process being specifically developed for the proposed Global First SMR Pilot Project. The purpose of these guidelines is to provide a future collaborative framework within which your agency and our communities can enter into the future:

- (a) Support deep, meaningful and effective consultation measures that include participation and involvement of our communities in screening, scoping and development planning activities initiated by your agency on our territory;
- (b) Ensure the inherent rights, title and jurisdiction of our communities as governing authorities are recognized, including our decision-making powers; this is essential to begin true “Nation-to-Nation” dialogues and respect for our Section 35 protected rights and title.
- (c) Respect the UNDRIP free, prior, and informed consent standard throughout a full and honourable joint process;

¹¹ Megan Darby, “Around the World in 5 Climate Change Lawsuits,” Climate Home, September 7, 2015, <http://www.climatechangenews.com/2015/07/08/around-the-world-in-5-climate-change-lawsuits/>.

¹² “BREAKING: Judge Protects Right to Stable Climate in Groundbreaking Decision in Washington Case!” press release, Our Children’s Trust, November 19, 2015, <http://www.ourchildrenstrust.org/event/717/breaking-judge-protects-rightstable-climate-groundbreaking-decision-washington-case/>.

(c) Ensure adequate and equal funding for each community engaged in consultation;

(d) Properly take into account the cultural, environmental and social concerns and interests of our communities, including incorporating sustainability and cumulative effect related issues in evaluating a proposed development.

(e) Take into account traditional knowledge and our capacity to carry out independent studies as part of environmental, social and cultural impact-assessment processes, with due regard to our ownership of and the need for the protection and safeguarding of our traditional knowledge;

(f) Collaborate on appropriate environmental, social and cultural impact study methodologies and technologies providing suitable timeframes to implement studies within consultations;

(g) Identify and implement appropriate measures to prevent or mitigate any negative impacts of proposed studies, developments or monitoring;

(h) Take into consideration the importance of balancing interrelationships among cultural, environmental and social elements;

(i) Recognize and support community led assessments.

Procedures in Nuclear Environmental Consultations at Chalk River

Given your agency consultations and developments can vary with respect to scope, size and duration and that KFN has not been formally engaged to date in any projects, the following consultation procedures can be adapted or redefined accordingly. What is important is to determine an agreed upon process to record our community views and concerns and potential accommodations within each consultation relative to the impacts of the proposed development. This must involve an early engagement request sent to our communities well in advance of the proposed development activity in order to develop agreements and mechanisms for our communities' effective participation. This includes mutual identification and provision of sufficient timelines and human, financial, technical and legal resources for effective participation in all phases of the consultation.

Please note our communities desire to fully integrate our cultural and environmental knowledge and expertise into both CEEA designated environmental assessments and environmental effect evaluations in non-designated project consultations. As such, we request our full involvement in the following stages:

(a) Preparatory stage: project screening and scoping. Presentation of the consultation and purpose of the project. This involves examination or clarification of the need or opportunity to be served and the determination of initial scope of inquiry. The Parties agree that an assessment should be robust, rigorous, predictable, timely, credible, and support durable decisions.

(b) Review stage: impact analysis and assessment; this involves identification and study of existing environment that may be affected, prediction of potential and cumulative effects, identification of mitigation measures including not proceeding with the development, finding alternatives including our own Indigenous alternatives. This involves comparison of agency plans and identification of preferred alternative(s), as well as detailed planning and mitigation measures which avoid the impact(s) and incorporating safeguards in the design of the development, or negotiating compensation for impact risks in areas of uncertainty.

(c) Reporting and decision-making stage: contributing to the guidelines of the impact assessment study; contributing to the development and review of the impact assessment study; decision-making; and devising management and monitoring plans, including roles and responsibilities, alternative proposals and mitigation requirements and conditions;

(d) Monitoring and auditing stage: participating in monitoring and environmental auditing and contingency plans regarding possible adverse cultural, environmental and social impacts resulting from a proposed development.

(e) Identification of actors responsible for liability, redress, insurance and compensation.

(f) Agreements, or action plans, on mutually agreed terms between the communities and your agency for the implementation of measures to prevent or mitigate any negative impacts of the proposed development;

(g) Establishment of a review and appeals process.

It is important to establish these types of conditions for consultations in advance and be subject to mutual evaluations for improvements as follows:

- A -- **Excellent**, no Indigenous engagement tasks left incomplete
- B -- **Good**, only minor omissions and inadequacies
- C -- **Satisfactory** despite omissions and inadequacies
- D -- Parts are well attempted, but **generally unacceptable**
- E -- **Poor**, significant omissions and or inadequacies noted; or,
- F -- **Very poor**, important tasks poorly done or not attempted¹³

4.0 THE WILD WEST OF SMR DEVELOPMENT

In preparation for an Indigenous Cooperation Agreement including the terms of KFN and AANTC providing comments on the proposed scope of factors to be considered in the conduct of an environmental assessment for a possible

¹³ Appiah-Opoku, Seth. *Indigenous institutions: a resource for environmental impact assessment and planning in Ghana*. Waterloo, Ontario: University of Waterloo, 1997.

SMR pilot project proposed by Global First Power Ltd. ¹⁴on Algonquin territory, KFN and AANTC requests CNSC to review its' internal procedures for fair and equitable resourcing for KFN and AANTC to thoroughly organize and review the project specific commission member document(s) (CMD) including the CNSC staff "Disposition Table of Public and Indigenous "Groups" and Organizations Comments" including a reasonable timeframe to visit the links to the actual comments made by what does seem at first glance to be concerned First Nations, individuals and organizations about this project. ¹⁵

Given, KFN is yet to be introduced to the proponent(s) KFN has overviewed the project description¹⁶ and voluntarily reviewed a May 2019 presentation on the pilot SMR idea to the Nuclear Insurance Association of Canada by Global First Power Ltd. COO Brian Gihm's.¹⁷ It was shocking to hear Mr. Gihm describe Global First Power as a start-up company where the possibilities for SMR's is the "wild west" of nuclear development. ¹⁸ This promoter is sure to shoot himself in the foot promoting a pilot nuclear SMR in the context of the "wild west" on Algonquin territory.

5.0 CONCLUSION

Our main objective is to work with Canada and the CNSC to develop and Indigenous Cooperation Agreement for a fair and equitable environmental assessment process that reflects our needs and not just the proponents in determining how credible and safe this SMR project really is and whether it will be acceptable to KFN and other communities within the Algonquin Nation.

We trust that CNSC And the Impact Assessment Agency are prepared to take this important step with our community in advance of commencing the project review process where KFN seeks the status of intervenor.

¹⁴ <https://iaac-aeic.gc.ca/050/documents/p80182/134709E.pdf>

¹⁵ <https://iaac-aeic.gc.ca/050/documents/p80182/134676E.pdf>

¹⁶ <https://iaac-aeic.gc.ca/050/documents/p80182/130911E.pdf>

¹⁷ <https://www.youtube.com/watch?v=mG3abGaYc5o>

¹⁸ Ibid.,



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May 14, 2020

The Honourable Prime Minister Justin Trudeau
House of Commons
Ottawa, Ontario K1A 0A6

Sent by email Justin.Trudeau@parl.gc.ca

Re: Canada's Need for an Overarching Indigenous Cooperation Agreement with the Algonquin Nation for Chalk River Nuclear Site Proposed Developments

Dear Honourable Prime Minister Trudeau:

First of all, I hope this note continues to find you and your family in good health. Our Nation greatly appreciates the tremendous efforts you, your Cabinet, and medical officer are making to safeguard Canadians from the health, social and economic effects of Covid-19. It is in this time of extraordinary caution that I am reaching out to you concerning issues we have with three proposed nuclear project proposal environmental assessments and potential operating licences on Algonquin territory at the Chalk River Nuclear Site, namely, the Near Surface Disposal Facility, Nuclear Power Demonstration Project and Micro Modular Reactor Test Project.

One major area of uncertainty amongst these active project assessments are the vast inconsistencies in the environmental assessment processes currently being employed by the Canadian Nuclear Safety Commission (CNSC) as a regulator and the Impact Assessment Agency of Canada (IAAC) as the federal lead agency for impact assessments. Perhaps most importantly, we are inquiring as to why the CNSC as a nuclear regulator continues to have a mandate of coordinating environmental assessments when your government has modernized impact assessment processes and created a single specialized agency responsible for coordinating consultations with indigenous peoples and the Canadian Energy regulator? In addition, we're questioning the effectiveness of CEAA 2012 as there is no option for panel reviews for nuclear facilities under the obsolete Act. In our view, the legislative terms under which these major nuclear projects are currently being reviewed needs your immediate attention and interim measures to be negotiated with our Nation(s).

As background, we have fully supported your government in meeting your target to reform environmental assessment legislation. On May 31, 2019, when your government requested our comments specific to nuclear energy projects under the Regulations Designating Physical Activities (the “Project List Regulation”) to advance the new *Impact Assessment Act* into effect both Kebaowek First Nation (KFN) and the Algonquin Anishinabeg Nation Tribal Council (AANTC) strongly supported the Expert Panel’s conclusions that “regulation and environmental assessment are two quite distinct functions that require different processes and expertise.”¹

Accordingly, KFN and AANTC insisted upon having nuclear impact assessments conducted by joint review panels, rather than by the CNSC itself. Significantly, during her testimony before the Standing Senate Committee, the President of the CNSC Rumina Velshi who we have cc’d in this letter expressed no objection to the IAA’s proposal to have designated nuclear projects assessed by review panels that include appointees from the CNSC.² We are therefore requesting that your government prescribes properly framed, fairly conducted, adequately staffed and sufficiently resourced joint review panel hearings as an interim legislative measure to represent the highest and best form of public participation in the impact assessment process for the Chalk River project reviews.

Not only do review panels offer parties an important opportunity to present (or challenge) evidence on the subject matter of the hearing, but they also enhance the overall credibility, completeness and fairness of the information-gathering stage and significantly assist in facilitating informed decision-making. I think your government will agree this should be a shared objective reflecting both modernized legislation and our evolving Nation to Nation relationship.

CNSC Failing to Support Meaningful Indigenous Participation

We have raised these concerns with CNSC both verbally and in writing on November 7, 2019 as KFN made a presentation at a scheduled commission hearing and requested the immediate development of a Nation to Nation Consultation Framework Agreement or Indigenous Cooperation Agreement in advance of any further environmental assessment work with our community(s). It was evident post hearing that the CNSC possesses great experience in regulating their respective nuclear sector, however they have little or no institutional expertise in Indigenous engagement. The Chair deferred KFN’s request to CNSC Indigenous liaison staff whom have since failed to expedite the development of the agreement and interim support towards meaningful Indigenous Participation in the current processes.

For example, CNSC staff acted in a discretionary manner by recently refusing AANTC funding support to review the project description for the Global First Power Micro Modular Nuclear Reactor project description and suggested KFN complete this work for AANTC (pg.4 attached)? We will not accept these meager or discretionary consultation methods offered by the CNSC given the scale and importance of these environmental assessments and potential impacts. As such, we request that the environmental assessment of the Global First Power Micro Modular Reactor project, including the upcoming June 1, 2020 deadline for interventions at the hearing be suspended until adequate provisions for Indigenous cooperation with our Nation are in place.

¹ Expert Panel Report, pages 50 to 51

² Evidence (February 7, 2019): <https://sencanada.ca/en/Content/SEN/Committee/421/enev/54526-e>.

As you are aware, Indigenous consultation in Canada is not discretionary, it is the Duty of the Crown³ and CNSC is failing this duty. For instance, we were not consulted on the relicensing of the Chalk River site in 2018. Consultation requires more in-depth arrangements and follow-up than CNSC staff sending or not sending out emails to our communities. Furthermore, this continuing behavior is not in sync with modernized Canadian environmental processes and we can not submit to imposed or lessor provisions under the *Nuclear Safety and Control Act* (NSCA), the terms of *REGDOC-3.2.2, for Indigenous Engagement* [5], or CNSC policies – known as REGDOCs – which limit the scope of studies that can be carried out in order to properly analyze potential nuclear projects that have significant potential to impact our territory(s).

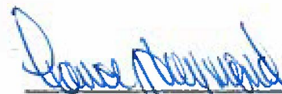
It is for these reasons we object to CNSC continuing to lead the Chalk River assessment processes and are requesting a meaningful and sustained solution from your office. We specifically require clarification on how CNSC's current approach can interface with new enacted advancements in IA legislation, as the EAs at the Chalk River site are continuing under CEAA 2012. Under CEAA 2012, the CNSC remains the sole authority for EA decision making, unlike the newly enacted IAA, where a CNSC Commissioner would be among the membership on an a review panel. We also seek your guidance on developing a comprehensive Indigenous Cooperation Agreement with the new Impact Assessment Agency of Canada (IAAC) and the CNSC concerning the Chalk River projects to:

- a) clarify interim legislative provisions, roles and responsibilities in the EA process; conduct project EAs that are guided by the principles and commitments of fair and mandatory Indigenous early engagement that effectively assess the potential adverse impacts of the Projects in due consideration that our Nation's jurisdiction of course flows not from Agency legislation but rather from Algonquin inherent governance, laws, and s.35 Constitutionally protected rights and title.
- b) identify the means by which the Agency, CNSC as well as the proponents CNL and Global First Power shall consult with our communities in the context of our evolving Nation to Nation relationship.

Looking forward to your timely reply, we remain.



Grand Chief Verna Polson
Algonquin Anishinabeg Nation Tribal Counsel



Chief Lance Haymond
Kebaowek First Nation

CC/

CNSC President Rumina Velshi: cpsc.ceopresident-pdpcresident.ccsn@canada.ca

Honourable Seamus O'Regan Minister of Natural Resources Seamus.ORegan@parl.gc.ca

Honourable Minister Jonathan Wilkinson Minister of Environment and Climate Change Canada ec.ministre-minister.ec@canada.ca

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³ Haida Nation v. British Columbia (Minister of Forests)
<http://scc.lexum.umontreal.ca/en/2004/2004scc73/2004scc73.html>.

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 Chief David Kistabish, Conseil de la Première Nation Abitibiwinni
 Chief Regis Penosway, Conseil des Anicinapek de Kitcisakik
 Chief Sasha Wabie, Timiskaming First Nation
 Chief Steve Mathias, Long Point First Nation
 Chief Casey Ratt, Algonquins of Barriere Lake
 Chief Lisa Robinson, Wolf Lake First Nation
 Councillor Frankie Cote, Kitigan Zibi Anishinabeg
 Chief Kirby Whiteduck, Algonquins of Pikwakanagan First Nation
 Deputy Chief, Dave Morris, Wahgoshig First Nation
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Attachment A

RE: Participant Funding Program - Global First Power's proposed project Inbox

Zenobi, Adam (CNSC/CCSN) <adam.zenobi@canada.ca> Mon, Feb 17 2:58 PM
 to AANTC, me, Samantha, Stacy, Adam

Hello Crystal-Lee,

Unfortunately, the original deadline for this funding opportunity was February 10, 2020. The CNSC's independent Funding Review Committee has already reviewed the applications and the limited amount of funding available for this opportunity (\$20,000) has been awarded.

However, Kebaowek First Nation did apply and will be awarded funding. If it works for you and Rosanne, would it be possible for Kebaowek First Nation and AANTC to collaborate on this stage of the environmental assessment (EA) process covered by this funding opportunity (i.e. review of the documentation related to the EA scoping decision)?

Please note that there will be more funding opportunities related to Global First Power's (GFP) Micro Modular Reactor. Once the CNSC makes a decision on the scope of the EA, a second participant funding opportunity will be announced to assist in reviewing GFP's draft environmental impact statement. A third participant funding opportunity will be announced at a later date to assist in reviewing the CNSC's EA report and related documentation and to participate in the Commission's yet-to-be-announced public hearings. These funding opportunities will be much larger (\$150,000 each) and cover a wider scope of activities. The CNSC will make sure AANTC is informed of these funding opportunities once they are announced. Furthermore, I would be happy to help you with these and other funding applications should AANTC be interested.

Thank you,
 Adam Zenobi