



**Written submission from the
Algonquins of Pikwakanagan
First Nation**

**Mémoire de la
Première nation des Algonquins de
Pikwakanagan**

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 Ltée, à Chalk River**

Hearing in writing based on written
submissions

Audience par écrit fondée sur des mémoires

June 2020

Juin 2020



*Algonquins of Pikwakanagan
First Nation*

May 31, 2020

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Reference: Request for a Commission Decision on the Scope of Environmental Assessment for Global First Power Micro Modular Reactor at Chalk River (CNSC Staff)

Dear Mrs. Rupert and Mr. McGoey,

On April 29, 2020, the Canadian Nuclear Safety Commission Staff provided written recommendations to the Canadian Nuclear Safety Commission (CNSC) regarding the scope of factors to include in an environmental assessment (EA) for Global First Power's (GFP or the Proponent) Micro Modular Reactor (MMR) Project at Chalk River. The MMR Project is proposed to occur in Algonquins of Pikwakanagan First Nation (AOPFN) territory and AOPFN members could be directly affected by the environmental, social, and economic effects of the Project. This letter and the attached table of comments is AOPFN's written response regarding the proposed scope of factors for the MMR Project EA. The attached table details specific AOPFN concerns on a range of matters related to the MMR Project and the potential scope of factors in its impact assessment process. Some of the requests are directed at the Proponent and/or to the site operator (Canadian Nuclear Laboratories Ltd. – CNL); some are directed to CNSC in relation to expanding or clarifying the scope of factors to be considered during this EA. We would appreciate if GFP and CNL can respond directly to our requests for the enhanced engagement process we are seeking in relation to this proposed Project. In particular, GFP's meaningful and expedited engagement of AOPFN is critical to gathering the information necessary to complete this EA; we look forward to this engagement and to prompt discussion about the provision of adequate capacity for us to contribute to this EA process.

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We also have outstanding requests for the CNSC, in its dual role as the primary agent in Crown consultation and in running the environmental assessment. AOPFN is particularly concerned about CNSC staff's recommendation to the Commission that generic guidelines and a generic scope of factors be the proponent's primary guidance for the scope of, and conduct of, this assessment. CNSC staff is recommending that the EA be based exclusively on their generic guidelines, with no project-specific modifications. We are concerned that a generic approach will not capture all relevant site-specific concerns. Suggestions that this less-prescriptive approach gives CNSC more latitude to pursue topics of interest than would otherwise be the case, must be balanced against the very real possibility, which has occurred often in the past, that Indigenous concerns and inputs play a peripheral rather than central role in the EA as a result of the lack of federal Crown guidance to proponents on the depth and breadth of engagement required with Indigenous Nations. AOPFN is concerned that generic guidelines allow too much latitude for proponents to define key concerns, valued components, indicators, assessment methods, and significance thresholds, and that this may result in key issues (as described in AOPFN Letter to CNSC dated September 20, 2019 and in the table below) not being captured or fully addressed in the Environmental Impact Statement (EIS).

We are left with most of our concerns about the scope of the assessment unanswered by CNSC staff's recommendations and responses. As such, concerns we first raised in our September 20, 2019 letter, remain outstanding. AOPFN interests have not been adequately considered in the process to date, including in relation to the scope of factors for the impact assessment. For example, CNSC staff's recommendation that "no additional factors are recommended", in the context of their recommendation re: inclusion of community knowledge and Indigenous Knowledge (IK), is premature. We commend that CNSC intends to continue collaborating with identified Indigenous groups and organizations to incorporate IK into the EA process. However, AOPFN is concerned about gaps in the scope of factors and the constraints this places on information sharing related to AOPFN IK and interests in regards to the Project.

AOPFN is also concerned that the recommended scope of factors, as stated in the aforementioned Commission staff April 29, 2020 document, includes section 19(1)(a-h) of *CEAA 2012* and no other factors, nor any detailed description of how those factors will be subject to the assessment. In particular, AOPFN requires that special attention be paid to section 5(1)(c) of *CEAA 2012*, regarding environmental effects on Indigenous peoples. **AOPFN would like CNSC to provide more detail as to how the proponent will be required to address section 5(i)(c) of CEAA 2012.**

AOPFN is also concerned about the potential for project splitting in relation to this EA. As we now understand it, GFP is only applying for a "license to prepare site". This project stage, again as we recently came to understand it, is limited to activities such as clearing vegetation, earthworks, construction of access roads, etc. and doesn't include the installation or operation of the MMR. Several of our initial requests focused on whether GFP has the experience and capabilities necessary to build and operate a nuclear reactor, which is the ultimate intention of the Project. But, since the current licensing phase only deals with site preparation, CNSC is indicating our concerns are premature. We find this very disconcerting. Shouldn't the proponent of a nuclear reactor be required to show it has the experience, knowledge and other capacities to build a nuclear reactor from the outset? Is that not how we weed out proponents that would not be likely to build safe, successful, projects, from those that can?

We have difficulty with splitting the project into phases like that and find it odd that the project is not proposed to be assessed in its entirety; we believe the technical term for this is "project splitting" and that it is frowned upon in environmental assessment practice. **We request that CNSC avoid project splitting or any**

hint of it, and assess the MMR in its entirety, including construction, operation, closure and reclamation activities. Having the “preliminary” licence means the project is already set in motion and would be difficult to impossible to halt thereafter, even if it might not be such a good idea. We would suggest that if this is a defensible project with more benefits than risks for the environment, people, and our Treaty rights, that it should be assessed in its entirety from the outset, so that those merits can be defensibly shown. This is a more efficient and defensible way to do environmental assessment and it allows for the entire picture of the whole effects (benefits and risks) of the proposed Project to be assessed at one time. It also means that uncertainty – especially for affected parties (who need to know what the total effects are of the whole Project) and the Proponent (which we would assume want a single green light for an integrated project) – is reduced.

In CNSC staff’s responses to AOPFN’s comments of September 20, 2019 (summarized in the attached table), CNSC staff has essentially said they are unable to compel the Proponent to provide the information we’ve requested until the project advances to licensing for construction and operation. This is certainly disappointing to us and brings into question whether this prior comment period was designed more to let Indigenous Nations “let off steam” (a practice the courts have frowned upon) rather than to start a substantive consultation process. In the interest of moving forward in a proactive way, we have reassigned several of the requests to GFP or CNL. However, we must indicate that in the end, approval for this Project and all projects in the Chalk River Site, must have federal Crown approvals, and it is the responsibility of the Crown to uphold its honour by meaningfully consulting with us and where necessary, accommodating for infringements to our Aboriginal or Treaty rights. Downloading those Crown consultation duties to the Proponent and site operator may in the end be seen as “passing the buck”. **We strongly encourage CNSC to “pick up” our recommendations and build them into the scope of factors and direction to the Proponent for this EA.**

In addition, **we request that GFP engage us as to its commitments to update the level of rigour and attention it will pay in this EA to that expected of projects that have been proposed since mid-2019; namely, to the standards applicable under the new federal *Impact Assessment Act (IAA)*. *CEAA 2012* was replaced for good reasons and one of them was that it is inadequate as a legislative instrument to meaningfully assess impacts on Aboriginal and Treaty rights, direct effects of Projects (both good and bad) on Indigenous health, society and economic factors, and doesn't adequately consider cultural considerations. *IAA* has improvements in relation to all of these topics; it is our expectation that this EA, both in the actions and documents generated by the Proponent and the Commission, will live up to these heightened expectations. **We request that GFP and CNSC engage and consult with us, respectively, as to how your organizations will live up to Canada’s commitment under *IAA* to an enhanced role for Indigenous peoples in impact assessment at the federal level, and increased efforts at reconciliation with Indigenous peoples.****

Regards,



Amanda Two-Axe Kohoko
Consultation Coordinator
Algonquins of Pikwakanagan First Nation

Attachment: AOPFN Position and Follow-up Requests Related to Topics Raised with the Scope of Factors for the GFP MMR Environmental Assessment

Attachment 1: AOPFN Position and Follow-up Requests Related to Topics Raised with the Scope of Factors for the GFP MMR Environmental Assessment

May 28, 2020

AOPFN #	Request Topics	CNSC Response Summary	AOPFN Position	Follow-up AOPFN Request
1	Conducting EAs on multiple SMR proposals.	Future SMR projects are not within the scope of the EA.	Based on the approach being taken by CNL, there is a potential that multiple SMR projects will be advanced to licensing prior to selection of the preferred technology provider. While this may be advantageous for CNL, it places a heavy burden on AOPFN, other interested parties and regulatory authorities to conduct comprehensive reviews of projects that are currently speculative. AOPFN's view is that CNL should select its preferred SMR technology provider before any associated licensing applications are submitted to CNSC.	<p>Directed to: CNL</p> <p>Request: That CNL modify its SMR selection process to ensure that only proposals from preferred technology provider(s) will be advanced to CNSC's licensing phase.</p>
2	Role of CNL as a proponent or co-proponent.	GFP meets the definition of "proponent", as outlined in section 2 of CEAA 2012, which means the person, body, federal authority or government that proposes the project. GFP is proposing the project and therefore, it is appropriate that GFP is the proponent.	AOPFN agrees that GFP conforms with the CEAA 2012 definition of a proponent. However, this does not preclude CNL or other entities from serving as co-proponents. AOPFN notes that GFP's proposal is in response to CNL's invitation for SMR Demonstration Projects and that CNL will ultimately select their preferred technology provider. In this respect, CNL is integral to the project being proposed by GFP and, as a consequence, should be identified as a co-proponent.	<p>Directed to: CNSC to determine; CNL to self-identify</p> <p>Request: As the operator of the Chalk River Laboratories (CRL) host site and initiator of the SMR demonstration project, that CNL should serve as a proponent or co-proponent of any associated SMR projects that are advanced to CNSC for licensing.</p>
3	Expertise and qualifications of the	The proponent is required to prove they are qualified for the scope of the	Despite disagreeing vehemently with the apparent project splitting that it entails, AOPFN acknowledges CNSC's approval process does not require the proponent	<p>Directed to: CNSC</p> <p>AOPFN recommends that CNSC assess the</p>

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	proponent.	<p>licensed activities they are applying for. At this stage, GFP has only applied for a License to Prepare Site and is therefore only required to demonstrate they have the experience necessary to design and undertake site preparation activities. Qualification for construction and operation will be assessed during the review of the Licence to Construct and Licence to Operate applications respectively.</p>	<p>to demonstrate their nuclear capabilities during the current site preparation phase. However, AOPFN draws attention to the fact that GFP has not yet demonstrated any in-house technical capabilities that are directly applicable to the eventual construction and operation of a nuclear reactor. Instead, GFP has indicated that such expertise will be sourced from other organizations (e.g., USNC, OPG, AECL or CNL). It is our understanding that these additional organizations have not definitively confirmed their participation or partnership in the project. In AOPFN's view, this undermines the credibility of the proponent's intent to construct and operate a nuclear reactor. By extension, it brings into question the seriousness of the current application.</p>	<p>whole MMR Project, not some "stage" of it, using principles defined by other assessment bodies to avoid "project splitting".¹</p> <p>Directed to: GFP</p> <p>Request: That GFP indicate which organizations in the project's organizational structure will be responsible for providing nuclear capabilities if the project proceeds to the construction and operation phases, and that it shows evidence of those organization's expertise and firm commitment to support the proposed project.</p>
4	Partnering structure and financing.	<p>The requested information is not a requirement for a project description. However, issuance of a licence by the Commission relies on a demonstration that an applicant is qualified to carry on the licensed activity, and has/will be</p>	<p>Similar to AOPFN #3, this request was intended to provide information to verify the capability of the proponent to eventually construct and operate a nuclear reactor. While AOPFN understands how CNSC's staged approvals process works, we are concerned that the approach doesn't include a mechanism to confirm whether a proponent is likely to be capable of advancing to the eventual implementation of construction and operation. GFP has not demonstrated</p>	<p>Directed to: GFP</p> <p>Request: That GFP indicate the partnership structure and financing arrangements that will be used if the project proceeds to the construction and operation phases.</p>

¹ See for example, Mackenzie Valley Review Board, Environmental Impact Assessment Guidelines, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwiysMCTiMHPAhX0oFsKHT4IBnkQFjAAegQIA_RAB&url=http%3A%2F%2Freviewboard.ca%2Ffile%2F614%2Fdownload%3Ftoken%3D3dz7s5gt&usg=AOvVaw0vFPAW7RGWvFraxIAEauh7, pdf pg. 31 of 97.

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		<p>implementing adequate measures for the protection of people, the environment and the maintenance of national security. As such, roles, responsibilities and any arrangements that support the applicant in meeting the CNSC's requirements to demonstrate that they are qualified, will be considered as part of the staff's review within the licensing process.</p>	<p>they have such capabilities which brings into question why they are identified as the proponent.</p>	<p>Directed to: CNSC</p> <p>Please confirm that the "roles, responsibilities and any arrangements..." referred to by CNSC staff at left, as well as information about adequate measures for protection of people, the environment and the maintenance of national security, will be subject to the <u>EA process</u>, not just "staff's review within the licensing process".</p>
5	Potential failure modes.	<p>CNSC staff agree that potential accidents and malfunctions related to this new type of reactor facility must to be considered and evaluated as part of the EA and licensing review process.</p>	<p>CNSC's staff position that potential failure modes should be considered is understood to be limited to the preparation of the site, not the eventual construction and operation of the SMR which would be the subject of future licensing applications. AOPFN agrees that detailed assessments of potential failure modes will be required as part of those future licensing applications. However, as indicated in our original request, AOPFN recommends that an <u>initial assessment</u> of such failure modes should be performed now. This will help to verify the proponent's unvalidated assertion that there are no scenarios where radioactivity could be released from the proposed SMR.</p>	<p>Directed to: GFP</p> <p>Request: That GFP present an <u>initial assessment</u> of potential failure modes to demonstrate there are no scenarios under which their proposed SMR technology would release radioactivity to the environment.</p> <p>Directed to CNSC:</p> <p>Request: Provide guidance to the Proponent that the scope of factors for this EA will include this initial failure modes assessment</p>
6	Provision of evidence to support the proponent's assertion there are no scenarios where radioactivity could be released.			

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				for the proposed SMR.
7	Provision of evidence demonstrating SMR facilities have operated without adverse environmental impacts.	Review of operational experience from similar facilities is relevant information that is expected to be taken into account in licence applications. Details regarding the modules and other design related considerations such as containment will be considered under the assessment of the Licence to Construct application.	Based on the response of CNSC's staff, the proponent will not be required to demonstrate that SMR facilities have operated without adverse environmental impacts during the current EA and licensing process. Instead, such information will be requested during subsequent licensing processes for the construction and operation of the facility. It is AOPFN's position that this information should be provided as early as possible during the overall approvals process; preparing a site to construct a facility that has not been proven to be sufficiently safe is neither defensible nor a useful exercise.	<p>Directed to CNSC:</p> <p>Request: Provide guidance to the Proponent that the scope of factors for this EA will include this assessment of operational experience related to SMRs.</p> <p>Directed to: GFP</p> <p>Request: That GFP provide evidence demonstrating that SMR facilities have operated without adverse environmental impacts.</p>
8	Assurances that AOPFN will be given meaningful opportunities to participate in the site selection and alternatives assessment processes.	AOPFN's requests have been noted by the CNSC and shared with the proponent. It is CNSC staff's expectation that the proponent review and address concerns and requests through ongoing engagement with all identified Indigenous groups and organizations, including the AOPFN, during the regulatory review process, including	For clarity, AOPFN has not been invited to participate, nor has it been consulted on the site selection and alternatives assessment for the current project. While we note CNSC's staff expectation that AOPFN's concerns will be identified through ongoing engagement, we also note that progress on this issue has been minimal to date. We therefore seek assurances that GFP and CNL will actively obtain and endeavour to address all relevant input provided by AOPFN.	<p>Directed to: GFP and CNL</p> <p>Request: That GFP and CNL provide assurances that AOPFN will be given meaningful opportunities to participate in the site selection and alternatives assessment processes.</p>

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		the development of the draft EIS.		
9	Rationale for not evaluating other sites outside of the Chalk River property.	Selection of the site is expected in the draft EIS and licensing documentation as well as detailed site information and maps.	CNSC's generic guidelines require the proponent to address site selection. However, it is unclear to AOPFN whether the consideration of alternative sites will include sites that are not located on the Chalk River property. This information is required to determine whether there are other viable sites for GFP's proposed nuclear reactor that are not located on AOPFN's traditional lands.	<p>Directed to: GFP</p> <p>Request: That GFP's site selection process include locations that are not on the Chalk River site and not on AOPFN traditional lands.</p>
10	Summary of engagement performed by CNL in support of GFP's proposal. Describe AOPFN concerns identified through this engagement and how the concerns will be mitigated.	CNSC staff committed to work with AOPFN to describe the preliminary information on AOPFN rights and interests that were gathered as part of CNSC's pre-consultation analysis work. CNSC staff also acknowledged the importance of integrating Indigenous knowledge (IK) in its assessments and regulatory processes. CNSC staff have noted AOPFN's comments in this regard, and have shared them with the proponent. It is CNSC staff's expectation that GFP will engage with AOPFN and considers gathering and working with	AOPFN acknowledges and appreciates the participant funding provided by CNSC to ensure the First Nation can engage in the current licensing process. In addition, there have been preliminary meetings in which GFP, CNL and CNSC have described the proposed SMR project. However, thus far, there has been limited engagement and consultation to ensure that AOPFN's concerns have been heard and mitigated. In addition to concerns, other forms of AOPFN input have yet to be considered.	<p>Directed to: GFP</p> <p>Request: That GFP provide a detailed description of: a) engagement performed with AOPFN; b) a summary of AOPFN concerns with the proposed project; c) mitigations GFP will put in place to address AOPFN's concerns; and d) potential AOPFN socio-economic opportunities and benefits associated with the proposed project. For clarity, the description should apply to the full project life-cycle (i.e., site preparation, construction and operation).</p>

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		IK as part of their project design and regulatory review process.		
11	Provision of the proponent's Indigenous engagement plan.	CNSC indicates that the proponent is to provide details within the EIS as to how specific requests, issues and concerns raised were addressed and mitigated. The proponent is also to provide updates on these activities in the EIS and in future iterations of their Indigenous Engagement Report. It is CNSC staff's expectation that the proponent share the draft Indigenous Engagement Report with identified groups.	AOPFN is of the opinion that a comprehensive and transparent Indigenous engagement plan is necessary to provide proactive assurances that actions taken to address Indigenous concerns will be sufficient and appropriate. AOPFN requested that the CNSC require the proponent to provide a copy of the Indigenous engagement plan that will be used to guide engagement activities throughout the licensing process. CNSC's response to AOPFN's request does not indicate whether GFP will be required to prepare such a plan.	<p>Directed to: GFP</p> <p>Request: That GFP develop and provide a draft Indigenous engagement plan. Prior to finalizing the plan, GFP should seek and incorporate feedback from AOPFN and other Indigenous interests on the adequacy of the plan. For clarity, the plan should apply to the full project life-cycle (i.e., site preparation, construction and operation).</p>
12	Provision of documentation supporting the proponent's preliminary rights assessment as it pertains to AOPFN.	<p>Directed to: CNSC and GFP</p> <p>Request: Both parties to identify how they are committed to supporting a full and proper Indigenous rights impact assessment, as per existing federal Interim Guidance on this topic from the Impact Assessment Agency of Canada.</p>		
13	Description of the proponent's approach to	<p>Directed to: GFP</p> <p>Request: GFP to identify how they are committed to supporting the gathering by AOPFN of appropriate Indigenous knowledge in relation to the Project-affected area, In</p>		

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	collect and use Traditional Knowledge.	line with current guidance on this topic from the Impact Assessment Agency of Canada.		
14	Provide a summary of all pre-existing baseline documentation of the CRL site and surrounding areas.	CNSC's response indicates that Appendix B of REGDOC 2.9.1, <i>Environmental Protection: Environmental Principles, Assessments and Protection Measures</i> provides specific criteria that are to be considered as part of the characterization of the baseline environment in the EIS. Similarly, section 3 of REGDOC-1.1.1, <i>Site Evaluation and Site Preparation for New Reactor Facilities</i> provides criteria for assessing the suitability of the site to host a reactor facility.	AOPFN noted that the Project Description provided very limited information on the baseline environment of the proposed site, despite the fact that the CRL property has been studied extensively. In addition, the Project Description did not describe the adequacy of existing baseline characterization data and whether additional baseline studies are needed to assess potential environmental impacts of the project. Last, no information is presented regarding the environmental modelling that will be performed to support the proponent's EA study report.	Directed to: GFP Request: That GFP provide a document which: a) describes all pre-existing baseline characterization reports; b) assesses the adequacy of baseline information; c) presents a workplan to address any baseline information gaps; and d) describes all environmental modelling that will be performed in support of the EIS. To avoid future potential delays, this information should be provided as early as possible (i.e., prior to the preparation of the draft EIS).
15	Identification of gaps in current baseline characterization and workplan for addressing those gaps.			
16	Summary of environmental modelling that will be performed to support the proponent's EA study report.		CNSC's response indicates that these information needs are to be addressed in the EIS. Based on this approach, the process of confirming the adequacy of baseline characterization studies will not begin until the proponent issues their draft EIS (tentatively in 2021). Any deficiencies that are identified at that time may require follow-up field studies. AOPFN is of the opinion it would be more appropriate to assess the adequacy of the baseline characterization earlier in the EA process.	
17	Summary of previous, current and reasonably foreseeable works and	CNSC's response indicates the proponent will be required to assess cumulative effects. This will reportedly	AOPFN currently has no further input on this topic.	Request: None at present.

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	activities in the vicinity of the proposed project.	include the assessment of all existing physical activities and reasonably foreseeable and certain future physical activities.		
18	Confirmation of capacity to store and ultimately dispose of radioactive wastes generated by the project.	CNSC states that the proponent is the sole organization responsible for nuclear waste management, storage and disposal provisions associated with the MMR project, and will have to indicate how all waste streams will be managed in the draft EIS and licence application submissions. This includes making arrangements with NWMO for the long-term management of the used fuel. However, CNSC notes that NWMO has indicated that it will accommodate SMR waste.	AOPFN currently has no further input on this topic.	Request: None at present.
19	Inclusion of the full scope of potential project effects on Indigenous rights and	N/A	AOPFN is concerned that if the assessment is limited to the consideration of the scope of factors in subsection 19(1)(a-h), as recommended by CNSC Staff, it is not clear how it will address <i>CEAA 2012</i> section 5(1)(c),	Directed to: CNSC Request: Provide more detail as to

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	interests		including assessment of Project effects on Aboriginal peoples' (i) health and socio-economic conditions, (ii) physical and cultural heritage, (iii) the current use of lands and resources for traditional purposes, (iv) any structure site or thing that is of historical, archaeological, paleontological or architectural significance.	how the proponent should address section 5(1)(c) of <i>CEAA 2012</i> in relation to the Project and potential effects.