



**Written Submission from the
Saugeen Ojibway Nation**

**Mémoire de la
Nation Saugeen Ojibway**

In the matter of the

À l'égard d'

Ontario Power Generation Inc.

Application to renew power reactor
operating licence for the Darlington
Nuclear Generating Station

Ontario Power Generation Inc.

Demande concernant le renouvellement
du permis d'exploitation d'un réacteur de
puissance pour la centrale nucléaire de
Darlington

**Commission Public Hearing
Part-2**

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

June 24-26, 2025

24-26 juin 2025



**Written Submissions of the Saugeen Ojibway Nation –
Ontario Power Generation’s request for 30-year licence renewal of Darlington Nuclear
Generating Station Power Reactor Operating Licence, PROL 13.03/2025**

May 15, 2025

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I. Request to Intervene

Pursuant to rule 19 of the *Canadian Nuclear Safety Commission Rules of Procedure*,¹ the Saugeen Ojibway Nation (“SON”) requests the opportunity to intervene in the public hearing on the 30-year renewal of the Darlington Nuclear Generating Station (“NGS”) Power Reactor Operating Licence (“PROL”) 13.03/2025, which expires on November 30, 2025, through written and oral submissions.

II. Contact Information

The SON can be contacted through its Environment Office as well as its legal counsel at:

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III. Overview

The purpose of this document is to provide the written submissions of SON to the Canadian Nuclear Safety Commission (the “**Commission**” when referring to the tribunal; “**CNSC**” when referring to the organization) as a component of its application to intervene.

1. Saugeen Ojibway Nation

SON is comprised of the Anishinaabe People of the Chippewas of Nawash Unceded First Nation and Chippewas of Saugeen First Nation. Anishinaabekiiing, SON’s Territory encompasses much of the Saugeen (Bruce) Peninsula, extending down south of Goderich and east of Collingwood. The waters surrounding these lands and the lakebed of Lake Huron from the shore to the international boundary with the United States and to halfway across Georgian Bay are also part of SON’s Territory.

SON’s ancestors have used and occupied Anishinaabekiiing since time immemorial and its People continue to do so today. SON’s Territory consists of everything integral to life—the

¹ SOR/2000-211.

lands, rivers, lakes, winds, plants, animals, and fish. Anishinaabekiiing has sustained SON People physically and spiritually for countless generations and must continue to do so far into the future.

2. Nuclearization of Anishinaabekiiing

The development of the nuclear industry in SON Territory has played a major role in shaping the land and SON People's place within it.² Without consultation or free, prior and informed consent ("FPIC"), SON became host to:

- Canada's first commercial-scale Canada Deuterium Uranium ("CANDU") reactor at Douglas Point;
- the world's largest operating nuclear facility at the Bruce site;
- the vast majority of Ontario's low and intermediate level waste ("LLW" and "ILW") at the Western Waste Management Facility ("WWMF");
- the Western Clean-Energy Sorting and Recycling Facility; and
- Nearly 45 percent of Canada's used fuel.³

OPG has been transporting nuclear waste to SON Territory without SON's consent for 45 years. This infringement of SON rights is compounded daily as OPG continues to make approximately 700 shipments of nuclear waste annually to SON Territory.⁴

The nuclear industry has consistently minimized SON's rights and excluded SON's perspectives, requests and desires throughout its history, all while heavily utilizing SON Territory to support its development. SON's FPIC has never been obtained.

IV. Proposed Amendment to the PROL

On January 1, 2016, OPG was issued the PROL for the Darlington NGS, which will expire on November 30, 2025. On May 30, 2024, OPG submitted an application for renewal in which OPG requested an unprecedented 30-year licence term for the PROL, from December 1, 2025, to November 30, 2055 ("**PROL Renewal Application**"), far exceeding current industry standards. In December 2024, OPG submitted a supplemental application which provided updated information on metrics and information that was pending at the time of OPG's May 2024 application. While Section 2.11 of the PROL Renewal Application references the continued transportation of nuclear waste to SON Territory and use of the WWMF in SON Territory,

² The history and current reality of the nuclear industry in SON Territory has been described in previous SON submissions relating to the licensing of the Western Waste Management Facility and the Joint Review Panel for Ontario Power Generation's deep geological repository for low and intermediate level wastes proposal.

³ Nuclear Waste Management Organization, [Nuclear Fuel Waste Projections in Canada – 2023 Update](#) at 4.

⁴ Letter from Laurie Swami (Senior Vice President, Decommissioning and Nuclear Waste Management, Ontario Power Generation) to Marc Leblanc (Commission Secretary, Canadian Nuclear Safety Commission) (May 16, 2016), [Application for Renewal of Western Waste Management Facility Operating Licence](#) at PDF 20, section 1.3.2.

neither OPG's PROL Renewal Application nor its supplemental application make a single reference to SON.

V. SON Concerns

SON's concerns focus primarily on (1) issues relating to the management, storage and disposal of radioactive wastes emanating from the Darlington NGS; and (2) the requested 30-year licence term. SON is concerned that:

1. The Crown has not discharged its duty to consult and accommodate SON with respect to the new stream of nuclear waste that would be transported to SON Territory during the requested 30-year licence period.
2. SON's FPIC for the management, storage, and potential disposal of this waste in SON Territory, as required by the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") and *United Nations Declaration on the Rights of Indigenous Peoples Act*, has not been obtained.
3. A 30-year licence term would set a troubling precedent for other nuclear generating stations, including the Bruce Nuclear Generating Station in the SON Territory, and would act to diminish regulatory protections for SON.

1. *Duty to Consult and Accommodate Not Discharged*

The duty to consult and accommodate is triggered when the Crown has real or constructive knowledge "of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it."⁵ This includes, for example, conduct of regulatory agencies that act "on behalf of the Crown when making a final decision on a project application."⁶ The duty to consult and accommodate "falls along a spectrum ranging from limited to deep consultation, depending upon the strength of the Aboriginal claim, and the seriousness of the potential impact on the right."⁷

Licence renewal applications may trigger the duty to consult and accommodate based on new rights infringing activity that would not otherwise occur without renewal.⁸

The Commission has an obligation to fulfill its duty to consult and accommodate SON and consider the impacts that the proposed PROL renewal will have on SON's Aboriginal and Treaty rights. To date, SON has not been meaningfully consulted about the proposed PROL renewal and necessary accommodations have not been developed. The current application is unacceptable to

⁵ *Haida Nation* at para 35; see also *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54 at para 81.

⁶ *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, 2017 SCC 40 [Clyde River] at para 29.

⁷ *Ibid* at para 20.

⁸ *Kwicksutaineuk Ah-Kwa-Mish First Nation v Canada*, 2012 FC 517 at paras 110-111; *Mississauga First Nation v Ontario*, 2022 ONSC 6859 at para 27.

SON as OPG relies on shipping an entirely new stream of LLW and ILW from a refurbished, life-extended Darlington NGS to the WWMF during the requested 30-year licence period.

CNSC staff have expressly stated that over the proposed 30-year licence renewal period, “routine activities related to waste management will continue in a safe manner, including regular shipments of waste to the Darlington Waste Management Facility, and the Western Waste Management Facility,”⁹ and that “[n]o significant changes to the management of radioactive waste [are] proposed for the next licensing period.”¹⁰ There is, however, nothing routine about the creation of 30-years worth of new radioactive waste and its management and storage in SON Territory. The new waste stream creates a significantly increasing impact on SON through the expanded accumulation of nuclear wastes in its Territory. The impacts are compounded by the absence of disposal plans for LLW and ILW.

Both OPG and CNSC staff recognise SON as an interested Indigenous Nation, rather than an impacted Indigenous Nation that is owed the duty to consult and accommodate in respect of the proposed PROL renewal.¹¹ OPG and the CNSC staff’s rationale is that the Darlington NGS is not located in SON Territory. This is an illogical and unacceptable position. LLW and ILW generated from the Darlington NGS is an inevitable and direct byproduct of the Darlington NGS’ operation and is explicitly planned to be transported to, and managed and stored in SON Territory possibly indefinitely. Unless circumstances change and OPG is required to find alternative waste management sites, there is clearly a cause-and-effect relationship between the operation of the Darlington NGS and the LLW and ILW being managed and stored in SON Territory and these impacts must be addressed. SON must be meaningfully consulted with respect to the new and significant waste streams that will be generated by the continued operation of Darlington NGS and appropriate accommodations must be developed and implemented to protect SON’s Aboriginal and Treaty rights.

2. FPIC Standard Not Met for Waste Management, Storage, and Disposal in SON Territory

The Commission is required to apply UNDRIP when making a decision on OPG’s PROL Renewal Application. UNDRIP mandates that no storage or disposal of hazardous materials—including LLW and ILW generated from the Darlington NGS—may occur on SON’s Territory until effective measures have been taken to obtain SON’s FPIC.

The legal requirements for the storage or disposal of nuclear waste in Indigenous lands or territories are now clear. In *Kebaowek v Canadian Nuclear Laboratories* (“**Kebaowek**”), the Federal Court found that the Commission must consider how UNDRIP may impact the interpretation of Canadian laws, including the fulfilment of section 35 constitutional obligations.¹² In particular, the Court found that the storage or disposal of hazardous materials in

⁹ [CMD 25-H2 - Submission from CNSC staff - Application from Ontario Power Generation to renew power reactor operating licence for the Darlington Nuclear Generating Station](#) at p 74.

¹⁰ [CMD 25-H2.A - Presentation from CNSC Staff - Ontario Power Generation - Application from Ontario Power Generation to renew power reactor operating licence for the Darlington Nuclear Generating Station](#) at slide 22.

¹¹ [CMD 25-H2 - Submission from CNSC staff - Application from Ontario Power Generation to renew power reactor operating licence for the Darlington Nuclear Generating Station](#) at p 55.

¹² *Kebaowek v Canadian Nuclear Laboratories*, [2025 FC 319](#) at para [81](#).

the lands or territories of Indigenous peoples triggers the FPIC standard, requiring a deep level of consultation and negotiations geared toward a mutually accepted arrangement.¹³

Section 2.11 of the PROL Renewal Application sets out how OPG intends to utilize SON Territory and the WWMF for the storage and disposal of nuclear wastes, including the incineration or long-term storage of solid radioactive waste, the incineration of radioactive oil, the incineration or storage of radioactive liquid chemicals, the incineration or disposal of inactive chemicals/liquid industrial waste, the incineration of PCBs and the interim storage of LLW and ILW at the WWMF. SON has not consented to any of the processing, management, storage or disposal activities outlined in the PROL Renewal Application nor has SON been invited to participate in the deep level of engagement or negotiations legally required before such activities may take place. As highlighted above, SON was not once mentioned or considered in OPG's PROL Renewal Application.

As an agent of the Crown and a court of record with the power to determine questions of fact and law,¹⁴ the Commission is obligated to ensure that no storage or disposal of hazardous materials shall take place in SON Territory without a robust process in place to obtain SON's FPIC. SON has never consented to the shipment of nuclear waste from OPG's nuclear facilities to SON Territory, including under the initial PROL that was issued for the Darlington NGS, nor has SON provided FPIC to ship waste from the Darlington NGS to the SON Territory under the proposed PROL renewal.

3. Requested 30-Year Licence Term Would Set a Concerning Precedent

SON submits that the 30-year licence term being sought by OPG will set a dangerous and unacceptable precedent and will undermine the important regulatory and procedural safeguards of the *Nuclear Safety and Control Act* and the critical function of the Commission. The Darlington NGS has historically operated under 10-year licence terms. The proposed 30-year licence term being sought by OPG, if granted, would represent an unprecedented extension of the licence term for a nuclear generating station in Canada. Such an extension could set a precedent for other nuclear generating stations, including the Bruce Nuclear Generating Station in SON Territory.

Licensing processes provide a critical opportunity to evaluate the risks and impacts associated with nuclear facilities, including providing an opportunity for First Nations to participate in the oversight and regulation of nuclear facilities and to present their concerns to the Commission through a fair, transparent and reviewable process. CNSC staff led compliance processes during the course of a licence are not sufficient. Licencing processes allow for information to be brought before the Commission directly by First Nations and require the Commission to meaningfully respond to information and concerns in a manner consistent with its constitutional obligations.

¹³ *Ibid* at para 130.

¹⁴ *Nuclear Safety and Control Act*, SC 1997, c 9, s 20(1).

In this way, licencing processes provide a critical tool that allows the federal Crown to discharge its constitutional obligations to Indigenous Nations and to build and maintain trust between Nations, the Commission and the nuclear industry. A 30-year licence would effectively remove the Commission from any further review of the existing operating reactors and remove the ability for First Nations to avail themselves of a critical tool to protect their rights and interests.

VI. Accommodations Required

1. Nuclear Waste Issues

Significant Crown obligations remain unfulfilled. The Commission cannot be satisfied that the deep level of engagement and negotiations geared toward a mutually accepted arrangement and the discharge of the FPIC standard, required by the *Kebaowek* decision, have been achieved. The licence issued by the Commission cannot ignore these outstanding obligations and presuppose that nuclear waste can continue to be exported into the SON Territory indefinitely in the absence of SON's FPIC. Rather, the licence must explicitly acknowledge the triggering of the FPIC standard and requirement that SON's FPIC be obtained through a robust process aimed at mutual agreement in relation to the transportation of waste from new, expanded and extended operations at the Darlington NGS to its Territory.

At present, SON is engaged in early discussions with OPG to address these matters directly. As part of broader engagement on the resolution of legacy issues¹⁵ arising from nuclear development in the SON Territory, SON and OPG are considering matters that relate to the WWMF and that may affect aspects of its future operations.

The Commission's decision must account for and acknowledge these discussions. Specifically, SON submits that the Commission must acknowledge in its decision the outstanding obligations owed to SON, and OPG and SON's efforts to discharge these obligations through a process of direct engagement aimed at seeking SON's FPIC and finding mutual agreement. It is the Commission's obligation to ensure the FPIC standard set out in *Kebaowek* is met. Accordingly, SON submits that the Commission must provide oversight to this process to ensure that it is carried out and that the Crown's obligations are discharged. SON submits one of the following two potential mechanisms are required:

1. SON submits that the PROL itself must include a requirement that OPG update the waste management plan for the Darlington NGS following the upcoming relicensing of the WWMF, to bring the plan into alignment with the outcomes of the ongoing engagement between SON and OPG, and that the Commission itself must review and approve the modified management plan through timely processes.

¹⁵ SON uses the term "legacy issues" to mean the historical and on-going impacts of the nuclear industry on the lands, waters, air, and animals of SON Territory, on the health and well-being of SON People, on the health of its economy, on its cultural and spiritual connection to the land, and on its right to make decisions to protect its lands and waters for its future generations

2. In the alternative, the Commission ought to limit the term of the PROL to the duration of the consultation process required to meet the FPIC standard. SON submits that a PROL term of three years would be appropriate, at which point a further relicensing process would allow the Commission to evaluate whether the Crown's obligations have been discharged, or whether an alternative waste management strategy must be developed for waste at the Darlington NGS. It would also allow the Commission to assess and reflect the outcomes of the relicensing process for the WWMF.

In the absence of the above, the Crown's obligations will remain unfulfilled. Further, the Commission's decision will run the risk of undermining discussions between OPG and SON, and of giving rise to the perception that the Commission has prejudged the outcome of the FPIC consultation process and the WWMF relicensing proceedings.

2. Licence Term

Further, SON respectfully submits that the Commission ought not to grant OPG the unprecedented and irregular 30-year PROL it is seeking. SON submits that the licence term should not exceed 10 years, the current industry standard for a Class 1 nuclear facility. As noted above, SON submits that a three-year licence term may be required to allow the Commission to ensure that the Crown's obligations with respect to the storage and potential disposal of nuclear waste in the SON Territory are addressed.

VII. Conclusion

For over 60 years, without consent, SON has been at the heart of the development of the nuclear industry in Canada. Through the storage and disposal of nuclear waste at the WWMF, OPG and the Darlington NGS are inextricably tied to SON Territory and the rights of SON within its Territory. The Darlington NGS PROL extension threatens to further this history. Longstanding legacy issues remain unresolved. Understood in this context, it becomes clear that any decision the Commission makes regarding the Darlington NGS stands to impact SON's rights, interests, and future in profound and lasting ways by continuing to allow an ever-increasing volume of nuclear waste to be stored and disposed of in SON Territory without SON FPIC. It is wholly unacceptable that significant amounts of radioactive nuclear waste are already being stored in SON Territory without SON FPIC and existing nuclear projects include assumptions that future wastes will be stored in SON Territory without meeting the FPIC standard and consequently, in a manner inconsistent with the law. The current licensing decision must recognize SON's rights and support, rather than undermine, the discussions between SON and OPG directed toward seeking SON's FPIC and finding mutual agreement.