



CMD 25-H101.5

Date: 2025-05-06

**Written Submission from the
Mississaugas of Scugog Island
First Nation**

**Mémoire de la
Première Nation des Mississaugas
de Scugog Island**

In the matter of

À l'égard d'

Ontario Power Generation Inc.

Application to amend the Pickering Waste Management Facility to authorize construction and operation of the Pickering component storage structure

Ontario Power Generation Inc.

Demande de modification du permis de l'installation de gestion des déchets de Pickering pour autoriser la construction et l'exploitation de la structure de stockage des composants de Pickering

**Public Hearing - Hearing in writing based
on written submissions**

**Audience Publique - Audience par écrit
fondée sur des mémoires**

July 2025

Juillet 2025



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Written Intervenor Submission:

Ontario Power Generation- Waste Facility Operating Licence Amendment for the Pickering Waste Management Facility



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Mississaugas of Scugog Island First Nation

May 6, 2025



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To the attention of:

Tribunal Officer, Commission Registry

Canadian Nuclear Safety Commission

interventions@cnsccsn.gc.ca |

May 6, 2025

Re: OPG's application to amend the waste facility operating licence for the Pickering Waste Management Facility – Written Intervenor Submission - Mississaugas of Scugog Island First Nation

Executive Summary

The Mississaugas of Scugog Island First Nation (MSIFN) is submitting this intervention regarding Ontario Power Generation's (OPG) application to amend the Waste Facility Operating Licence (WFOL) for the Pickering Waste Management Facility (PWMF). The amendment seeks approval to construct and operate the Pickering Component Storage Structure (PCSS) for interim storage of Low and Intermediate Level Waste (L&ILW) from the decommissioning and refurbishment of Pickering Nuclear Generating Station (PNGS).

MSIFN has concerns about the lack of Crown consultation and consent regarding past nuclear development on their traditional lands, covered by the Gunshot Treaty and Williams Treaties of 1923. This submission highlights the risks posed to MSIFN and its rights and interests by nuclear waste storage, obligations to uphold treaty rights, and the absence of definitive Crown long-term waste management plans. MSIFN emphasizes the need for compliance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), including Free, Prior, and Informed Consent (FPIC), and calls for the Crown to facilitate enforceable agreements, environmental protections, economic inclusion, and active participation in regulatory processes.

This submission outlines key requests of the Crown to ensure the safety, rights, and well-being of MSIFN's community, the Michi Saagiig Nations, and future generations, while urging Crown agencies - Natural Resources Canada (NRCan) and the Canadian Nuclear Safety Commission (CNSC) - to prioritize reconciliation and uphold their legal obligations.



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Key Requests:

1. **Binding Agreements:** Enforceable agreements between OPG and treaty rights holders to formalize commitments, ensure compliance, and uphold MSIFN's rights.
2. **Environmental Protection:** Comprehensive cumulative effects assessments and binding provisions to protect the environment and Indigenous rights.
3. **Economic Participation:** Inclusion of MSIFN in economic opportunities related to PCSS construction, maintenance, and monitoring.
4. **Nuclear Site Security:** Collaboration on security protocols and training tied to Indigenous engagement.
5. **Implementation of UNDRIP:** Alignment of PCSS operations with UNDRIP and NRCAN's waste policy, ensuring FPIC for long-term storage.
6. **Regulatory Involvement:** Formal participation in OPG's regulatory programs, including environmental monitoring, emergency preparedness, and waste management.



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1 Introduction

Ontario Power Generation (OPG) has applied to amend the Pickering Waste Management Facility (PWMF) operating licence to authorize construction and operation of the Pickering Component Storage Structure (PCSS). The PCSS would provide interim storage for Low and Intermediate Level Waste (L&ILW) generated from the decommissioning of Pickering Nuclear Generating Station (PNGS) Units 1–4, and the refurbishment of Units 5–8. OPG is requesting the Commission to amend the PWMF, Waste Facility Operating License (WFOL)-W4-350.00/2028, to construct and operate the PCSS for interim storage of L&ILW from Pickering NGS. Ownership and operation of the PCSS will reside with the PWMF.

The PWMF and proposed PCSS are located on the PNGS site in Pickering, Ontario, on the traditional lands and unceded waters of the Michi Saagiig Anishinaabeg, and the territories covered by the Gunshot Treaty and the Williams Treaties of 1923. The PNGS is located within our traditional territory, along the north shore of Gchi Neebeesh (Lake Ontario) and utilizes the unceded lakebed for its cooling systems. The Crown did not engage or consult with the Michi Saagiig Nations when it originally planned and built the PNGS, or its associated waste facilities.

1.1 MSIFN Background

The Mississaugas of Scugog Island First Nation (MSIFN) is located on the shores of Lake Scugog in the Region of Durham, Ontario. MSIFN, alongside the other Michi Saagiig and Chippewa First Nations, collectively form the Williams Treaties First Nations (WTFNs). Within these Treaty territories, MSIFN places utmost importance on protecting the lands, waters, wildlife, and fisheries vital to our livelihood, along with ensuring community safety.

The first Mississauga people settled in the basin of Lake Scugog around 1700. Game and fur animals, waterfowl and fish abounded, and wild rice grew in profusion in the shallow waters. Long before there was a Port Perry or even the province of Ontario, our people moved through this region — not as wanderers, but as caretakers and participants in an interconnected system. Our ancestors travelled across what is now called southern Ontario, following the seasons and the cycles of the land. During the warmer months, we would gather along the north shore of Lake Ontario, fishing and gathering wild plants. In the fall and winter, we moved north of the Kawarthas — toward what is now known as Muskoka, Haliburton, even as far as North Bay or Ottawa — breaking into family groups to hunt, trap, and sustain our communities.



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Lake Scugog was, and remains, a central hub in this seasonal round. For example, the Scugog Carrying Place, which connected Lake Ontario to Port Perry and Lake Scugog, was a major travel route. It carried not only our people, but also trade – pre- and post-contact, culture, and ceremony. But even in these early records, we see the pattern of disruption begin to form. In 1828, the construction of a dam in Lindsay raised the water levels of Lake Scugog dramatically. That action turned the township into an island and permanently altered the ecology of the area. Wild rice beds, vital to our diet and our economy, were flooded out. Cranberry bogs disappeared. Fish habitats changed.

The Michi Saagiig on Scugog Island were pushed out, again, temporarily relocated to Balsam Lake, to Coldwater, to Mud Lake. It wasn't until 1843 that our people, dissatisfied with the land quality at Balsam, returned to Scugog and purchased 800 acres of our own land near the north end of the island. We did what we had to do to come home. That decision to return is a powerful part of our story. It wasn't just about geography. It was about identity. It was about holding onto our place, our language, our teachings.

As Michi Saagiig people, our relationships with the waters, and all living and non-living beings, are deeply woven into our Way of Doing and Knowing. These are not practices we adopted in recent times, they are traditions we have always carried forward, without interruption. When we protect the lake, we honour our ancestors. When we educate others about the value of wetlands, we uphold our teachings. When we plan for the next seven generations, we act with love for our children, our grandchildren, and for all those yet to come.

MSIFN are cultural partners of the Michi Saagiig (Mississauga) Nation, with traditional territories expanding through most of southeastern Ontario, including lakebeds, tributaries, and watersheds. MSIFN is signatory to the Williams Treaties of 1923, which after 90 years of dispute came to a final settlement agreement in 2018 that reaffirmed our pre-confederation treaty rights to harvest. MSIFN is also signatory to the Framework Agreement for First Nations Lands



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Management,¹ the *First Nations Fiscal Management Act*,² and other political Aboriginal arrangements all of which support our Inherent Right as a self-governing authority.

1.2 Connection to the Project

MSIFN's reserve community is located approximately 40 km from the PNGS, PWF, and proposed PCSS, placing it within the 50 km Ingestion Planning Zone (IPZ) for potassium iodide pill distribution in the event of a nuclear emergency on site. As the only First Nation in this IPZ, MSIFN members have expressed concerns about the safety, management, and security of the nuclear reactors and waste stored at the site, as well as potential ongoing environmental impacts.

These risks have existed for decades, without ever providing consent. MSIFN must continue living with the risks associated with the PNGS and its associated waste management facilities. Our traditional territory is where it is. Contamination of this area is an infringement which cannot be undone or satisfactorily accommodated.

The proposed PCSS falls within the recognized treaty and traditional territory of the Williams Treaties First Nations, and as a rights-holding Nation, MSIFN urges the CNSC and OPG to prioritize the safety of our community and the protection of our treaty rights. Nuclear safety is paramount to MSIFN. Nearly every aspect of the nuclear fuel lifecycle occurs within our territory, except for uranium mining. These post-colonial activities will continually impact our community. It is the future generations who will bare this burden and MSIFN, along with the CNSC and OPG has a legal obligation to ensure their safety.

MSIFN's Chief and Council, in conjunction with their teams, act as their community's regulatory body. The process MSIFN must undertake to discharge their legal obligations to their citizens and community is complex and not something that the Crown can legally rush or disregard. UNDRIP exists to protect this, and our duty is to ensure it is upheld. After a 90-year fight to have our rights recognized, MSIFN insists the CNSC respects the weight of this recognition.

¹ Framework Agreement on First Nation Land Management, WESTBANK, MUSQUEAM, LHEIDLI T'ENNEH (formerly known as "LHEITLIT'EN"), N'QUATQUA, SQUAMISH, SIKSIKA, MUSKODAY, COWESSESS, OPASKWAYAK CREE, NIPISSING, MISSISSAUGAS OF SCUGOG ISLAND, CHIPPEWAS OF MNJIKANING, CHIPPEWAS OF GEORGINA ISLAND, SAINT MARY'S, as represented by their Chiefs and all other First Nations that have adhered to the Agreement and, as represented by the Minister of Indian Affairs and Northern Development, HER MAJESTY THE QUEEN IN RIGHT OF CANADA, 12 February 1996 [FA].

² SC 2005, c 9 [FNFA].



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2 United Nations Declaration on the Rights of Indigenous Peoples

MSIFN supports Canada's carbon reduction objectives in the energy sector and understands Ontario's need for additional supply, which Ontario's Minister of Energy recently pegged at a 75% increase by 2050. However, those objectives must be implemented consistently with Canadian law, especially with UNDRIP, the TRC, the UNDA Action Plan and the CNSC's commitment to recognize and fulfill Canada's obligations to MSIFN's constitutionally protected Aboriginal and treaty rights and advance reconciliation.

Unfortunately, to date, the process has failed to ensure such rights will be protected. The root of the failure resides in an outdated regulatory framework that has not adapted to fulfill Canada's obligations to Indigenous rights. For example, CNSC's consultation process was unilaterally developed and does not reflect the reconciliation roadmap of the federal government, Natural Resources Canada (NRCAN) and the CNSC's stated commitments.

The Honourable Gary Anandasangaree, Minister of Crown-Indigenous Relations, stated:

*"The UN Declaration Act and the related Action Plan are key parts of the roadmap to reconciliation. They help guide Canada's collaborative efforts with Indigenous partners to address the harmful legacies of colonization, and build renewed relationships based on a fundamental respect for Indigenous rights."*³

Pierre Tremblay, President and CEO of the CNSC, opened the October 2, 2024, Darlington New Nuclear Project (DNNP) License to Construct Hearing Part 1 by stating that reconciliation is a priority for him.⁴ This echoes former President and CEP of the CNSC Rumina Velshi's 2022 statement:

"Notably in Canada, the federal government is committed to reconciliation with Indigenous peoples, a commitment we at the CNSC embrace wholeheartedly. And federal legislation was adopted last year that provides a roadmap for implementing the United Nations Declaration on the Rights of Indigenous Peoples. In short, doing

³ Department of Justice Canada, News Release, "Third annual progress report on the implementation of the UN Declaration on the Rights of Indigenous Peoples Act highlights progress and points to where further work is needed" (20 June 2024), online: Department of Justice Canada <<https://www.canada.ca/en/departement-justice/news/2024/06/third-annual-progress-report-on-the-implementation-of-the-un-declaration-on-the-rights-of-indigenous-peoples-act-highlights-progress-and-points-to-.html>>.

⁴ Canada: Canadian Nuclear Safety Commission, *Public Hearing (Transcript)*, (2 October 2024) at pg. 1.



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*things as they were done before is no longer an option, and that should be welcome news."*⁵

MSIFN was pleased to hear President Tremblay's commitment to reconciliation, a process that requires amongst other things, the implementation of UNDRIP. During a 2024 keynote address Mr. Tremblay spoke about the CNSC's encouragement of Indigenous consultation and engagement. Under the topic of trust building he said, "[A]s an agent of the Crown, the CNSC has a responsibility and obligation to meet its Duty to Consult and Accommodate when decisions that the Commission makes could potentially impact Indigenous or treaty rights."⁶ He then went on to speak about funding options, creating terms of reference, and the responsibility on proponents to develop meaningful, long-term relationships with Indigenous Nations. He finished by drawing attention to REGDOC 3.2.2 which outlines CNSC Indigenous Engagement.

What was striking about Mr. Tremblay's keynote address was the absence of UNDRIP or the requirement of consent. The Prime Minister established this directive in 2021. In 2024, the President of a Crown agency has the responsibility to implement UNDRIP. Yet, concerningly, this was an omission.

The CNSC's vision is to build trust and advance reconciliation which must be guided by UNDRIP, TRC and the principles respecting the Government of Canada's relationship with Indigenous peoples. The CNSC also claims to support the implementation of the UNDA Action Plan.⁷ Up to this point, MSIFN believes the CNSC staff have not fulfilled these claims.⁸

Upholding reconciliation requires the CNSC to overhaul its internal structure and consultation process. MSIFN has not been a part of creating the current consultation process nor have we consented to it. To this end, there is an urgent and imperative need for the CNSC to comply with

⁵ Canadian Nuclear Safety Commission, Speech, "Remarks by Rumina Velshi at the NEA Workshop on the Management of Spent Fuel, Radioactive Waste and Decommissioning in SMRs or Advanced Reactor Technologies" (8 November 2022), online: *Government of Canada* <<https://www.canada.ca/en/nuclear-safety-commission/news/2022/11/remarks-by-rumina-velshi-at-the-nea-workshop-on-the-management-of-spent-fuel-radioactive-waste-and-decommissioning-in-smrs-or-advanced-reactor-tech.html>>.

⁶ Canadian Nuclear Safety Commission, Speech, "Keynote address by Pierre Tremblay, President and CEO of CNSC at the 5th International Conference on Generation IV and Small Reactors" (3 October 2024), online: *Government of Canada* <<https://www.canada.ca/en/nuclear-safety-commission/news/2024/10/keynote-address-by-pierre-tremblay-president-and-ceo-of-cnsc-at-the-5th-international-conference-on-generation-iv-and-small-reactors.html>>.

⁷ Canadian Nuclear Safety Commission, "Reconciliation" (25 September 2023), online: *Government of Canada* <<https://www.cnsccn.gc.ca/eng/resources/aboriginal-consultation/reconciliation/>>.

⁸ There has been no request for consent, no seeking of consent, no mechanism to enforce the Proponent's promises to MSIFN, no consultation on the process which seems to be ad hoc, and no real dialogue simply a one-way conversation. This is evident in the Rights Impact Assessment process described further below.



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the law. CNSC's current process is outdated and does not align with the federal government nor NRCan's legal obligations.

MSIFN is asking that the following UNDRIP Articles are upheld:

- Article 18 which provides for the right to partake in decision making on matters affecting their rights;
- Article 19 which provides that States will consult with Indigenous peoples and get their consent before adopting measures that will affect them;
- Article 26 which provides for Indigenous control over traditional lands and the States respect of those lands;
- Article 32(2), which provides that "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 land or territories and other resources..." ("FPIC"); and
- Article 29(2) which provides "States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent."

3 The Current Law

3.1 UNDA, UNDRIP and FPIC

UNDA came into force in June 2021. *UNDA* brings the intent and objectives of the UN Declaration into Canadian law and provides a statutory foundation for the proper implementation and operationalizing of UNDRIP.⁹ *UNDA* also provides a framework to advance implementation of the Declaration at the federal level.¹⁰

The practical implications of *UNDA* in the energy sector have been addressed through legislation, such as the *IAA*,¹¹ and most recently in *Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025 FC 319 [*Kebaowek*]. If there is no legislation that explicitly deals with the Declaration, or if the law is perceived as not aligned with the Declaration, there is no automatic repeal, nor does it create any new obligations or regulatory requirements. Regardless of

⁹ *Supra* note 3.

¹⁰ Department of Justice Canada "Backgrounder: *United Nations Declaration on the Rights of Indigenous Peoples Act*" (10 December 2021) online: *Department of Justice Canada* <<https://www.justice.gc.ca/eng/declaration/about-apropos.html>>.

¹¹ *IAA*



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whether or not a specific reference to the Declaration is made in legislation, Canada continues to have a constitutional duty to uphold it including operationalizing FPIC. This requires the Crown to fill legislative gaps with different processes or new creative ways to ensure meaningful and effective participation of Indigenous rights holder in decision-making.¹²

Kebaowek presented the first time UNDRIP and FPIC were considered by the federal court and provides guidance to administrative tribunals. Justice Blackhawk found that the Declaration and FPIC are required considerations and while they intersect with the DTCA they are stand alone requirement.

The federal court in *Kebaowek First Nation v Canadian Nuclear Laboratories*¹³ clarified that the federal government is legally required to apply the *United Nations Declaration on the Rights of Indigenous Peoples*, including Free, Prior and Informed Consent (FPIC) when it is pursuing action which may infringe Indigenous rights protected by UNDRIP. UNDA is the legal instrument enforcing UNDRIP in Canada. While consideration of UNDRIP may be part of the formal DTCA it is not a necessary requirement that the DTCA is triggered for UNDRIP to apply. The obligation to consider UNDRIP and its articles is not reliant on the triggering of the DTCA. **Consideration of UNDRIP is a stand-alone obligation.**

FPIC was discussed in the *Reference to the Court of Appeal for Quebec*. This case was concerned with the constitutionality of *An Act respecting First Nations, Inuit and Metis children, youth and families* which was affirmed by the SCC.¹⁴ Justice Mainville of the QCCA stated at para 193:

In July 2017, the federal government (under the aegis of the then Minister of Justice, the Honourable Jody Wilson-Raybould) announced a set of principles designed to govern its relationship with Aboriginal peoples from that point forward. The policy that followed in 2018 did more than merely strengthen the 1995 policy, refashioning it on the basis of s. 35 of the Constitution Act, 1982 and the UN Declaration. The ten principles affirmed therein "are a necessary starting point for the Crown to engage in partnership, and a significant move away from the status quo to a fundamental change in the relationship with indigenous peoples".²⁴² These principles, which are set out here, together with some of their accompanying comments, are based on

¹² Department of Justice Canada, "Backgrounder – Natural Resource Sector" (19 April 4 2022), online: *Department of Justice Canada* <<https://www.justice.gc.ca/eng/declaration/bgnrcan-bgnrcan.html>>.

¹³ 2025 FC 319 [*Kebaowek*]

¹⁴ *Supra* note 28.



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recognition of the right to self-determination of Aboriginal peoples, which becomes the foundation for government-Aboriginal relations:

1. The Government of Canada recognizes that all relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government...

6. The Government of Canada recognizes that meaningful engagement with indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources.

The CNSC must recognize and respond accordingly to the SCC's interpretation of the *UNDRIPA* as a pre-existing set of rights that must continue to animate Canadian law. *Kebaowek* affirms this requirement. MSIFN is concerned that current and future CNSC decisions may not be informed by the Declaration.

UNDRIP has also been called an international "obligation" by the Federal Court, one which creates a presumption that Canadian legislation is enacted in conformity to it.¹⁵ The Canadian Human Rights Tribunal relied on UNDRIP to find that equality is to be substantive and not merely formal.¹⁶

The Quebec courts have taken a much more vigorous approach to the use of UNDRIP as an interpretive aid. The Quebec Court of Appeal confirmed that UNDRIP is nevertheless a universal human rights instrument whose values, principles and rights are a source for the interpretation of Canadian law.¹⁷ The Court of Appeal went on to find that while UNDRIP is non-binding internationally, it "has been implemented as part of the federal normative order" via the UNDRIP Act.¹⁸ On appeal, the Supreme Court of Canada similarly observed that "...the Declaration has been incorporated into the country's positive law by the [UNDRIP Act], s. 4(a)."¹⁹ While the Court of Appeal did not elaborate in detail on what it meant by UNDRIP being "implemented as part of the federal normative order", it did rely on this conclusion to bolster and confirm its interpretation

¹⁵ *Elsipogtog First Nation v Canada (Attorney General)*, [2013 FC 1117](#) at para 121 aff'd on other grounds [2015 FCA 18](#).

¹⁶ *First Nations Child and Family Caring Society of Canada v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, [2016 CHRT 2](#) at para 453.

¹⁷ *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, [2022 QCCA 185](#) at para 507 rev'd in part on other grounds [2024 SCC 5](#).

¹⁸ *Ibid* at para 512 aff'd [2024 SCC 5](#).

¹⁹ *Supra* note 28 at para. 4; see also para 15.



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of [s. 35 of the Constitution Act, 1982](#) as recognizing and affirming the right of Aboriginal peoples to regulate child and family services, which the Court of Appeal considered to be “entirely consistent with the principles set out in [UNDRIP]”.²⁰ The Quebec Superior Court, following the Court of Appeal's decision, went even further. After reviewing the history of Canada's relationship with UNDRIP, the Court concluded that “UNDRIP, despite being a declaration of the General Assembly, should be given the same weight as a binding international instrument in the constitutional interpretation of [s. 35\(1\)](#)”.²¹ The practical effect of this would be that when interpreting [s. 35\(1\)](#), courts should generally presume that the protections it offers are at least as great as the rights set out under UNDRIP.²²

3.2 UNDA Action Plan

The CNSC continues to acknowledge its commitment to consultation and cooperation with Indigenous partners, as well as aligning the implementation of the UNDA Action Plan, particularly FPIC on natural resource projects, which includes both existing and proposed nuclear initiatives. Nevertheless, the ongoing absence of FPIC for project activities is notable despite MSIFN having raised this request on several occasions. MSIFN is calling on the Commission to require the CNSC to enact concrete measures that implement the UNDA Action Plan.

As part of the TRC's Calls to Action, the UNDA Action Plan was established by the federal government in 2023. The UNDA Action Plan speaks to collaborative decision making, supporting Indigenous leadership in conservation, respect for Indigenous rights, culture and jurisdiction weaving Indigenous science with western science to inform decision-making, consideration of health, social and economic factors, including impacts to women, youth, and Elders, among other things.²³

The UNDA Action Plan specifically addresses NRCAN and tasked the CER to complete a number of action items, many which the CNSC can easily adopt:

- Develop regulations respecting the Minister of NRCAN's power to enter into arrangements enabling Indigenous governing bodies to exercise specific powers, duties and functions under the Canadian Energy Regulator Act.
- Incorporates specific localized knowledge held by Indigenous peoples, as well as Indigenous laws, policies, practices, protocols, and knowledge.

²⁰ *Supra* note 36 at para 61.

²¹ *R v Montour*, [2023 QCCS 4154](#) at paras 1175-1201.

²² Woodward 2:38 United Nations Declaration on the Rights of Indigenous Peoples para 2.1085

²³ *Supra* note 4.



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- Strengthens measures to prevent and address impacts to Indigenous rights and interests, including in relation to heritage resources and sites of Indigenous significance.
- Develop a systemic model to enhance Indigenous peoples' involvement in compliance and oversight over the lifecycle (design, construction, operation and abandonment) of CER-regulated infrastructure. The model should integrate learnings from existing structures and relationships.
- Consult and cooperate to identify and take the measures needed to support Indigenous governing bodies, and/or the potential establishment of new Indigenous decision-making institutions, to exercise regulatory authority on projects and matters regulated by the Canada Energy Regulator, including:
- Co-develop with First Nation, Métis and Inuit communities, governments and organizations and relevant federal department and regulators the mandate of such bodies or institutions, as well as the mechanisms required for empowering them with certain regulatory authorities.
- Identify the actions and allocate the resources required to further develop capacity and expertise for the exercise of regulatory authority by such bodies or institutions.
- This work could lead to other federal departments, regulators or institutions, similarly working in consultation and cooperation with First Nations, Métis and Inuit communities, governments and organizations, to:
- Enhance the participation of Indigenous peoples.
- Set the measures that could enable them to exercise regulatory authority, in respect of federally regulated natural resource projects.

CNSC has the authority to follow the CER's precedent and enable Indigenous governing bodies to exercise regulatory authority in conjunction with the nuclear decisions and matters given that the Commission has existing powers to (i) enter into arrangements, (ii) establish advisory, standing and other committees, and (iii) certify persons to carry out duties under the *NSCA*. Furthermore, the Commission has the authority to issue, renew, suspend in whole or in part, amend, revoke, replace or redetermine a licence to carry out any activity described in the *NSCA*.

Despite the overarching obligations on Canada and CNSC's acknowledgement that it is responsible for discharging obligations, the CNSC claims to lack the legislative authority or regulatory tools to require consent on projects under their mandate.²⁴ CNSC does not require any greater mandate that is already provided. Regulatory bodies must have the authority

²⁴ Canadian Nuclear Safety Commission, "Supplementary Information: Written submission from CNSC Staff" (2 February 2024) at 14-15, online (pdf): *Canadian Nuclear Safety Commission* <<https://api.cnscccsn.gc.ca/dms/digital-medias/CMD24-H2-B.pdf/object?subscription-key=3ff0910c6c54489abc34bc5b7d773be0>>.



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necessary to meet their express and necessarily implied authority. It would be antithetical to the CNSC's obligation if it did not possess the authority to make decisions compliant with constitutional and other legal requirements. As the courts have indicated, additional avenues may be required.

4 Canada's Policy for Radioactive Waste Management and Decommissioning

Canada's Policy for Radioactive Waste Management and Decommissioning intends to recognize and implement the rights of Indigenous Peoples, including through the federal government's commitment to UNDRIP. As a rights-holding First Nation, hosting several nuclear waste management facilities, MSIFN expects that the principles of this policy are meaningfully applied in all processes related to radioactive waste management.

The policy includes the following key federal commitments that must guide any engagement with MSIFN and other Michi Saagiig Nations of the Williams Treaties First Nations:

1. **Recognition of Indigenous Rights**

Acknowledge, respect, and honour the unique status and rights of First Nations, Inuit, and Métis peoples, as affirmed in the Constitution Act, 1982, and uphold the honour of the Crown in all dealings.

2. **Implementation of UNDRIP**

Commit to reconciliation and implementation of the United Nations Declaration on the Rights of Indigenous Peoples and be guided by frameworks and measures developed under Canada's UNDRIP Act that are relevant to radioactive waste management and decommissioning.

3. **Meaningful Engagement**

Facilitate meaningful engagement with Indigenous peoples on an early and ongoing basis through capacity building, information sharing, and collaboration.

4. **Free, Prior, and Informed Consent (FPIC)**

Recognize that early, continuous, and meaningful engagement aimed at securing FPIC builds trust and respectful relationships with Indigenous communities.

5. **Integration of Indigenous Knowledge**

Recognize and value the importance of Indigenous knowledge and the role Indigenous Peoples have played in stewardship of lands and waters over generations.



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6. Addressing Historical Harms

Acknowledge that some radioactive wastes were created or stored within Indigenous territories without prior consultation, and commit to working with affected Nations to address these past issues.

In addition to these federal commitments, the policy outlines expectations for waste generators and owners, such as OPG, to:

1. Respect Indigenous Rights

Acknowledge the unique status of Indigenous Peoples as rights holders and work in partnership to understand the implications of waste management projects on their rights.

2. Collaborate on Indigenous Knowledge

Work in partnership with Indigenous Peoples to integrate Indigenous knowledge and advice into the planning and operation of waste management projects.

3. Ensure Meaningful Engagement

Demonstrate meaningful, respectful, and ongoing engagement with Indigenous Peoples throughout the siting, construction, operation, and monitoring of facilities.

4. Support Capacity Building

Build capacity within Indigenous communities to allow for full and informed participation in project engagement and decision-making processes.

MSIFN supports these principles in full and expects them to be realized through concrete actions by both the CNSC and OPG. The legacy of nuclear development in our territory includes decades of risk exposure without consent, and it is imperative that going forward, MSIFN's role as a rights holder and steward of the land is respected in accordance with these commitments, especially those related to historic issues and FPIC on a going forward basis.

5 Plan for Existing, Imminent and Future Waste

MSIFN is concerned about the management of used nuclear fuel and other nuclear waste, and the Crown's lack of a definitive long-term plan for existing, imminent, and future waste. There is an absence of comprehensive federal policy for First Nations dealing with long-term nuclear waste management, particularly at sites where waste is generated and may be stored indefinitely if the Nuclear Waste Management Organization (NWMO) fails in its mandate. This poses long-term environmental and health risks to our communities.



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Despite the proximity and impacts, neither the NWMO nor the Crown has prioritized meaningful engagement with First Nations treaty rights holders, like MSIFN, who have lived with nuclear waste on their lands for over fifty years and will continue to do so for decades to come.

Long-term management and disposal of nuclear waste in Canada is being guided by the Integrated Strategy for Radioactive Waste (ISRW), developed by the NWMO at the request of Natural Resources Canada (NRCan) and endorsed by the Minister of Energy and Natural Resources in October 2023. Under the strategy:

- **Low-Level Waste (LLW)** is to be permanently disposed of in a near-surface disposal facility. OPG, as the waste generator and owner, is responsible for developing this facility. In 2024, OPG began province-wide outreach, contacting Indigenous Nations and communities across Ontario, followed by municipalities to initiate two-way dialogue on nuclear energy and LLW disposal.
- **Intermediate-Level Waste (ILW)** will be permanently disposed of in a Deep Geologic Repository (DGR), with the NWMO leading a consent-based siting process. Planning for this process is currently underway.

MSIFN supports the right of other Nations to self-determination in deciding whether to host nuclear waste. However, the reality remains, if the NWMO and OPG are unsuccessful in finding a willing host, nuclear waste from operations and decommissioning may remain indefinitely at the PNGS site, on our traditional lands. This outcome must be addressed by the Crown through long-term planning, engagement, and policy development.

Three years ago, the CNSC highlighted the need to deal with the waste in present, not holding it off until the future. In 2022, Ms. Velshi stated:²⁵

"Radioactive waste must be managed to ensure there is no undue burden on future generations. Its management must be based on a lifecycle responsibility approach."

All steps in waste management – from generation to disposal – must be taken into account as part of an integrated waste management system. And it must account for the interdependencies among all steps in managing radioactive wastes, particularly the long-term plans. The onus is now on industry, in collaboration with policy makers, to develop an integrated plan."

²⁵ *Supra* note 9.



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This plan must be developed with full engagement and consultation of the public and Indigenous Nations and communities. Developing an integrated plan will be crucial to earning the trust of the public and Indigenous Nations and communities, and the approval of decision makers.

It is neither possible nor appropriate to shy away from any issues of concern. And it is irresponsible and unacceptable to punt-off answering these questions to "sometime in the future".

The recently approved license extension for the PNGS will result in the generation of more solid radioactive waste, in addition to the waste from decommissioning. Again, it should be emphasized that MSIFN never provided consent to the PNGS, PWMF, PCSS, or future on-site storage of nuclear waste at the Pickering site. We are now faced with the associated risks. Given the risks associated with the storage of radioactive waste in the Treaty Territory, possibly indefinitely, MSIFN underscores the necessity of securing consent.

The lack of Indigenous engagement, consultation and collaboration from CNSC staff for additional nuclear waste storage facilities should be of urgent concern to the Commission. The CNSC cannot state their commitment to reconciliation and implementing UNDRIP while at the same time ignoring the Declaration's Article 29 (2) which requires MSIFN's consent on waste.

Implementing UNDRIP and FPIC means MSIFN's consent is required, not just that their views will be considered. The CNSC cannot sit in a position of discretionary power over decisions that affect our inherent jurisdiction. **MSIFN requests a First Nation consent provision be formulated and enforced by the Commission for the management of nuclear waste at all sites.**

6 Conclusion

6.1 Key Requests

1. Binding Agreements with Treaty Rights Holders

MSIFN calls for the Crown to support binding, enforceable agreements between OPG and First Nation treaty rights holders specific to the PNGS, PWMF, PCSS and their ongoing operations. The Crown should ensure these agreements:

- Formalize OPG's commitments to the Michi Saagiig WTFNs with respect to license conditions.
- Ensure compliance with environmental and safety obligations and uphold MSIFN's treaty rights.



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- Define clear processes for continued consultation and involvement of rights-holding First Nations in all PWMF and PCSS-related decision-making.
- Include monitoring and follow-up provisions to assess long-term environmental, health, and safety impacts of operations.
- Provide dedicated capacity funding to enable MSIFN's informed and sustained participation.

The Crown should also ensure these agreements reflect the principles of FPIC and apply across the life cycle of the project, from construction to long-term waste storage and potential decommissioning.

Long-Term Relationship Agreement (LTRA) content specific to PCSS should include:

- Adequate resourcing for MSIFN and other Michi Saagiig Nations to review PCSS technical documents (i.e. stormwater management, erosion and sediment control, and groundwater monitoring).
- Emergency spill management protocols.
- Transparent engagement mechanisms tied to the PNGS, PWMF, and surrounding waste storage infrastructure.
- Acknowledgment of the need to obtain consent in future decisions about expanding, modifying, or extending the PCSS's operations.

3. Environmental Protection and Cumulative Impacts

- MSIFN urges the Crown to ensure development and enforcement of comprehensive cumulative effects assessments to evaluate the long-term and overlapping impacts of:
 - Nuclear power generation.
 - Nuclear fuel and waste storage facilities.
 - Historical and ongoing industrial activities across Lake Ontario.
- The Crown should ensure these assessments must explicitly account for unceded lakebed and water territories impacted without First Nation consent.
- The Crown should ensure agreements include binding provisions to uphold the rights of First Nations, the environment, and ensure nuclear waste management at the Pickering site does not proceed without rights-holder engagement and consent.

4. Economic Participation and Equity

With respect to economic reconciliation, the Crown should ensure OPG commits to Indigenous economic inclusion related to the PCSS, including:



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- Opportunities for MSIFN members and businesses in the PCSS's construction, maintenance, and monitoring activities.
- Training and employment programs connected to PCSS operations and future waste storage management.
- A procurement strategy that prioritizes rights-holding First Nation contractors and vendors for PCSS related work.

Without such commitments, MSIFN will continue to experience the risks of nuclear development without sharing in its economic benefits.

5. Nuclear Site Security and Community Safety

MSIFN supports Bill C-21's direction to enhance nuclear facility security through limited peace officer designations. MSIFN calls on NRCAN and the CNSC to:

- Update REGDOC 2.12 to include Indigenous Peoples, UNDRIP, and engagement training.
- Mandate coordination between peace officers, law enforcement, and cybersecurity experts.
- Ensure OPG includes MSIFN in the development of PCSS security protocols, including those related to peace officer designations and coordination with local law enforcement.

6. Implementation of UNDRIP and NRCAN Waste Policy

The Crown should further ensure the development and operation of the PCSS aligns with:

- UNDRIP, especially with respect to MSIFN's right to FPIC for long-term storage on our territory.
- NRCAN's Policy for Radioactive Waste Management and Decommissioning, including early and ongoing engagement, support for Indigenous knowledge, and addressing past harms.

MSIFN has never consented to the long-term storage of nuclear waste on our lands. The PCSS must not be treated as a default permanent storage solution in the absence of consent-based alternatives.

7. Involvement in OPG Regulatory Programs

The Crown should ensure as part of OPG's application to amend the WFOL to accommodate the PCSS, that MSIFN and other Michi Saagiig Nations are formally involved in:

- The Environmental Assessment Follow-Up Program
- The Environmental Monitoring Program



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- The Emergency Preparedness Program
- The Waste Management Program

The Crown should ensure that MSIFN receives dedicated capacity funding to meaningfully participate in these regulatory programs, especially in relation to the PCSS's operational risks and environmental impacts.

Finally, the Crown should ensure that OPG engages MSIFN on:

- PCSS decommissioning planning and any proposed future land uses.
- Risk assessments and monitoring related to PCSS waste containment and transport.
- Environmental and human health risk analyses specific to PCSS operations.