



# UNITED CHIEFS and COUNCILS OF MNIDOO MNISING

## Deep Geologic Repository Project For Low and Intermediate Level Radioactive Waste

### Response to Ontario Power Generation's Submission (December 28, 2016)

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*Eshi-Ngodwe Aangiziing Niiz-naabek  
'Descended from the Creator'*

**NGO DWE WAANGIZID ANISHINABE  
ALL OF OUR TRIBES**

*Debenjiged gii'saan Anishinaben akiing  
Creator placed Anishinabe on the earth*

*Giibi dgwon gaadeni mnidoo waadiziwin  
Along with the gift of spirituality*

*Shkode, nibi, aki, noodin, giibi, dgosdoonan wii naagdowendmang maanpii shkagmigaang*  
Here on mother earth, there were gifts given to the Anishinabe to look after fire, water, earth,  
wind

*Debenjiged gii miinaan gechtwaa wendaagog Anishinaben waa naagdoonijin ninda niizhwaaswi  
kino maadwinan:*

The Creator also gave the Anishinabe seven sacred gifts to guide them; they are:

*Zaagidwin, Debwewin, Mnaadendmowin, Nbwaakaawin, Dbaadendiziwin, Gwekwaadziwin,  
miinwa Aakedhewin.*

Love, Truth, Respect, Wisdom, Humility, Honesty and Bravery

*Debenjiged kiimiingona dedbinwe wi naagdowendiwin.*  
Creator gave us sovereignty to govern ourselves

*Ka mnaadendanaa gaabi zhiwebag miinwaa nango megwaa ezhwebag, miinwaa geyaabi waa ni  
zhiwebag.*

We respect and honour the past, present and future.



## **Overview**

The United Chiefs and Councils of Mnidoo Mnising (“UCCMM”) represents six Anishinabe Nations in Ontario: Aundeck Omni Kaning, Sheguiandah, M’Chigeeng, Sheshegwaning, Whitefish River, and Zhiibaahaasing. Our role is to foster and protect the interests and rights of our Anishinabe Nations, and to refine and promote strong traditional government.

Our objective is to work as partners in a Nation-to-Nation relationship to ensure the operation of an environmental assessment framework that respects our Anishinabe rights and interests as recognized by *Ngo Dwe Waangizid*, section 35 of the *Constitution Act, 1982*,<sup>1</sup> and the *United Nations Declaration on the Rights of Indigenous Peoples*.<sup>2</sup> The language of *UNDRIP* respects that Anishinabe Peoples must be involved in legislative and policy development;<sup>3</sup> that we must be allowed to participate in decision-making through our own Clan systems;<sup>4</sup> that we must give our free, prior and informed consent to any project that may affect us;<sup>5</sup> and that Canada must operate transparent processes that potentially affect our rights.<sup>6</sup>

We take the position that the only way to re-engage in a renewed Nation-to-Nation process with Anishinabe Peoples is for Canada to respect our rights under Anishinabe traditions as recognized by *Ngo Dwe Waangizid*, the Constitution, and international law.

The Joint Review Panel and Ontario Power Generation (“OPG”) must respect that our Anishinabe Nations operate according to our own Anishinabe traditions. Our Anishinabe Nations continue to fulfill our responsibility to protect our sacred gifts of Fire, Water, Earth, and Wind in our traditional territory. Any potential impact on our inherent rights must be considered at the outset. Any potential infringement of our rights requires our free, prior and informed consent.

As protectors of our sacred gifts of Fire, Water, Earth, and Wind, we take the position that this process does not yet substantially address our concerns or accommodate our interests. We cannot consent to OPG’s Deep Geologic Repository (“DGR”) Project for Low and Intermediate Level Radioactive Waste (“L&ILW”). The Minister of Environment and Climate Change asked OPG to provide additional information for the L&ILW DGR in relation to alternate locations,

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<sup>1</sup> *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s 35.

<sup>2</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGA, 61<sup>st</sup> Sess, UN Doc A/61/L.67 (2007) [*UNDRIP*].

<sup>3</sup> *UNDRIP*, Article 19.

<sup>4</sup> *UNDRIP*, Article 18.

<sup>5</sup> *UNDRIP*, Article 32(2).

<sup>6</sup> *UNDRIP*, Article 27.



cumulative environmental effects, and mitigation commitments. OPG’s response does not satisfy our concern that Mother Earth will be protected from harm. Human life, animal life, plant life, and water life will all be negatively impacted as a result of this project and it is our responsibility to protect the environment from this irreparable harm.

## Summary of our Positions

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### 1. Anishinabe Nations Must Be Involved in the Development of Legislation and Policy

A principle of the *United Nations Declaration on the Rights of Indigenous Peoples* is that the free, prior and informed consent of Anishinabe Peoples must be sought by a State before implementing legislative measures that may affect them.

States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.<sup>7</sup>

This principle has been respected by the Supreme Court of Canada; the Crown has a Constitutional obligation to consult and accommodate First Nations on “strategic, higher level decisions” that may have an impact on their rights and claims.<sup>8</sup>

The federal government has also committed to the implementation of the principles found within *UNDRIP*. To date, Anishinabe Nations are rarely, if ever, consulted on legislative measures and strategic policy decisions that affect our inherent rights and interests. Our Anishinabe Nations were not involved in the recent legislative amendments to the *Canadian Environmental Assessment Act, 2012*.<sup>9</sup> Nor were our Nations involved in the development of policy such as the

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<sup>7</sup> *UNDRIP*, Article 19.

<sup>8</sup> *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43 at para 44.

<sup>9</sup> *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19, s 52 [*CEAA 2012*].



*Technical Guidance for Assessing Cumulative Environmental Effects under the Canadian Environmental Assessment Act, 2012.*<sup>10</sup>

The federal government must involve our Anishinabe Nations in legislative and policy measures in order to fully implement *UNDRIP*. Further, the Supreme Court of Canada has held that consultation with First Nations must be meaningful.<sup>11</sup> If consultation is to be meaningful, it must start at the initial stage of legislation and policy development.

## **2. Anishinabe Nations' Traditional Consultation Processes Must Be Respected**

*UNDRIP* respects that the free, prior and informed consent of Anishinabe Nations is required prior to the approval of any project that affects our sacred gifts of Fire, Water, Earth, and Wind.

States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.<sup>12</sup>

*UNDRIP* also respects that Anishinabe Nations can participate in decision making through our own procedures and decision making institutions.

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedure, as well as to maintain and develop their own indigenous decision-making institutions.<sup>13</sup>

UCCMM has internal processes and decision making institutions in order to safeguard our Anishinabe Nations' traditional and Constitutionally protected rights and interests. This internal process incorporates our Anishinabe oral traditions. Our oral traditions can only be shared according to our governance protocols, and these oral traditions must be respected. Our free, prior, and informed consent must be sought within our decision making institutions before any project is approved that affects our traditional lands.

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<sup>10</sup> [https://www.ceaa-acee.gc.ca/Content/B/8/2/B82352FF-95F5-45F4-B7E2-B4ED27D809CB/Cumulative\\_Environmental\\_Effects-Technical\\_Guidance-Dec2014-eng.pdf](https://www.ceaa-acee.gc.ca/Content/B/8/2/B82352FF-95F5-45F4-B7E2-B4ED27D809CB/Cumulative_Environmental_Effects-Technical_Guidance-Dec2014-eng.pdf)

<sup>11</sup> *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at para 10, 245 DLR (4th) 33; *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69 at para 67, 259 DLR (4th) 610.

<sup>12</sup> *UNDRIP*, Article 32(2).

<sup>13</sup> *UNDRIP*, Article 18.



For example, Anishinabe manage our resources through Clan systems, agreed upon through discussion and consensus. Well-developed Clan systems assist in regulating behavior and resolving disputes. Each family born into *dodem* (totem). A person's *dodem* creates reciprocal obligations among fellow Clan members, thereby establishing a horizontal relationship with different communities and creating allegiances that extend beyond the confines of the home village.

A person's *dodem* indicates more than our lineage: obligations are attached to our Clan affiliation. Anishinabe Peoples have obligations to our families and community: to support them, to help them prosper, and to exercise our rights to live and work. In our Anishinabe oral traditions, responsibilities and rights are intertwined.

Our Anishinabe Nations have strong oral traditions that convey our duties relative to our world view. These are stewardship-like concepts and apply to our use of Fire, Water, Earth, and Wind. The Anishinabe oral traditions and Clan systems continue to exist today within our Anishinabe Nations. The seven original Clans are:

- The Deer (Hoof) Clan
- The Eagle Clan
- The Crane Clan
- The Turtle Clan
- The Loon Clan
- The Bear Clan
- The Marten Clan

The Clan system continues to form part of UCCMM's governance structure. Too often consultations are sought by proponents and the Crown contrary to *Ngo Dwe Waangizid* and our Anishinabe traditions.

In order for meaningful consultation to take place, our internal processes and decision making institutions must be respected. There can be no meaningful consultation through the use of generic information sharing, generic written submissions, or generic hearing processes. Monthly face-to-face meetings must be conducted in order to facilitate meaningful information sharing and to discuss the ongoing mitigation and monitoring of the L&ILW DGR. Our Anishinabe Nations want to develop a Manitoulin specific consultation relationship with OPG in regards to this Project.



### 3. OPG's Study of Alternate Locations is Inadequate

We are of the view that OPG did not reasonably respond to the Minister's request to perform a study of alternative sites.

In order for the L&ILW DGR to be technically feasible, OPG determines that the host rock should be geologically stable for up to 1 million years.<sup>14</sup> In addition, the host rock requires a minimum depth of 200 meters, and a minimum thickness of 300m.<sup>15</sup> Based on this threshold for technical feasibility, OPG provides two alternate "locations": a Crystalline location and a Sedimentary location. When one looks at a map of these two "locations", roughly 60% of Ontario is identified as an alternate "location". In our view, this is completely contrary to the Minister's request to reference "actual locations". OPG's interpretation of the Minister's request has the effect of saying the L&ILW DGR could alternatively be located "somewhere in Ontario". This general approach is unacceptable.

OPG justifies their general approach in identifying alternate locations since it could take up to 20 years to identify other specific-sites. In OPG's view, it would be tantamount to "returning to the starting line" if they would be required to perform a site selection process that identifies actual locations, which is "contrary to the first principle guiding the federal government's review of current [environmental assessments]."<sup>16</sup> Respectfully, OPG has completely misinterpreted this principle.

In 2016, the federal government announced that it would review and introduce a new environmental assessment regime. This review is currently underway. During the interim period, the federal government released a series of principles, one of which confirmed that:

No project proponent will be asked to return to the starting line — project reviews will continue within the current legislative framework and in accordance with treaty provisions, under the auspices of relevant responsible authorities and Northern regulatory boards.<sup>17</sup>

The federal government committed that once the new environmental assessment framework is introduced, projects will not be asked to return to the starting line. To date, no new environmental assessment framework has been introduced. All works must continue within the current process.

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<sup>14</sup> OPG's Deep Geologic Repository Project for Low & Intermediate Level Waste, "Study of Alternate Locations Main Submission" at page 18 (00216-REP-07701-00013) [Alternate Locations Main Study].

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*, at p 15.

<sup>17</sup> *Ibid.*, at p 14; also see <http://news.gc.ca/web/article-en.do?nid=1029999>.



The environmental assessment of OPG's L&ILW DGR has always been under the same legislative framework. The new legislative framework has not yet been implemented. The federal government committed that projects in between the current and future legislative frameworks will not be required to return to the starting line. OPG has misinterpreted this message as authority to mistakenly sidestepped the Minister's request to provide actual alternate locations.

The result is that OPG has made no substantive effort to locate actual alternative locations. OPG reminds us that it was the Municipality of Kincardine that initiated the discussions and offered its support to host the L&ILW DGR. Again, OPG states that identifying alternate locations would introduce uncertainties in the project due the additional time and resources required to obtain the consent of another host community. This is however precisely the work that must now be done. There is no indication that OPG ever reached out to any other community to develop the social license. In OPG's mind, the Municipality of Kincardine was the only location ever considered for the project. This is unacceptable and it does not substantially address or accommodate our concerns.

Rather than a realistic attempt to provide the Minister with information about actual alternate locations for the project, OPG's submission simply aims to reaffirm their preferred location in Kincardine.

OPG also provides a study of the environmental effects at these alternate locations. Since no "actual" alternative location was provided, the environmental effects are also general and make no reference to specific locations. Further, it is also not apparent what data was gathered and used in the preparation of this document, nor is an extensive list of sources provided.

What is clear is that all the lands and rivers in Ontario lie within one of two main watersheds: the Great Lakes Basin or the Hudson Bay Basin.<sup>18</sup> What is also clear is that the L&ILW DGR will contain significant amounts of the radionuclide Carbon-14.<sup>19</sup> This radionuclide has a half-life of 5,700 years and is mobile in water, and OPG estimates that the radioactivity of the L&ILW will decay within 100,000 years.<sup>20</sup>

The Anishinabe Elders have taught us that Mother Earth is a living spirit that moves. There is no guarantee that there will be no seismic shifts in the Earth within 100,000 years and that Carbon-14 will not enter our waters. The water is the lifeblood of the Earth and Turtle Island is the heart

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<sup>18</sup> *Ibid*, at p 4.

<sup>19</sup> *Ibid*, at p 13.

<sup>20</sup> *Ibid*, at p 3.



of Her circulatory system. The L&ILW DGR puts the health of our environment and our waters at risk.

What fails to be recognized by OPG is that there may be no location in Ontario that can safely store this radioactive waste. In light of this reality, it is irresponsible to continue to produce nuclear waste when there has been no plan for its proper disposal, or when the plan for its disposal entails risking the health of our waters.

#### **4. OPG's Study of Cumulative Environmental Effects Ignores Anishinabe Knowledge**

The Minister of Environment and Climate Change requested that OPG provide an analysis of the cumulative environment effects of the L&LIW DGR in light of the results from the Nuclear Waste Management Organization for the Adaptive Phased Management (“APM”) DGR for nuclear waste. The Minister requested this because the proposed sites for the L&ILW DGR and the APM DGR are in close proximity.

A site has not been selected for the APM DGR and this is not anticipated to occur before 2023. Thus, it was assumed that the APM DGR would be located at one of three potential locations in Southern Ontario. The closest potential site would be 20 km from the L&ILW DGR site and the furthest potential location would be 86 km away.

OPG concluded that no adverse cumulative effects were identified and that an assessment of significance of cumulative effects is not required. It is our view that this conclusion did not adequately address the Ministers concerns, and furthermore is contrary to our Anishinabe principles and the legal requirement of meaningful consultation. The result is that OPG's response to the Minister is merely lip-service that does not substantially address the issues.

OPG used a valued eco-system component (“VEC”) approach to its updated cumulative effects assessment. OPG stated that it used the VEC approach because Canadian Environmental Assessment Agency directed them to do so. However, it is our position that this approach to determining cumulative environmental effects is unacceptable.

For example, OPG outlines that the APM DGR and the L&ILW DGR will both be negatively impact the aquatic environment. However, since both projects will not be located within the same local watershed there will be no geographic overlap of effects on the aquatic environment, and no cumulative effect. In reference to air quality, the OPG study found that there is a potential for geographic overlap of effects between the APM DGR and the L&ILW DGR. However, OPG states that it is unlikely that activities that generate air emissions associated with each project will occur at the exact same time due to the anticipated infrequent nature of air emissions across the phases of both projects. OPG further states that it is also unlikely that the air emissions will





persist in the atmosphere for the same duration. Therefore, OPG concludes that no adverse cumulative effects on air quality were identified.

This type of analysis is insufficient. These two examples erroneously conclude that if an effect does not overlap in time and space with another project there is deemed to be no adverse cumulative effect. This analysis neglects to take into consideration the interconnectedness of the environment. The environment cannot be broken down into silos. Recognizing the meaning of cumulative environmental effect from our worldview is critical. There are clearly cumulative effects and they must be addressed with a specific plan and measures to reduce the effects.

*CEAA 2012* specifies that an environmental assessment must take into account “the environmental effects of the designated project... and any cumulative environmental effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out”.<sup>21</sup> However, *CEAA 2012* does not currently require Anishinabe Knowledge when considering cumulative effects; an “EA of a designated project may take into account community knowledge and Aboriginal traditional knowledge.”<sup>22</sup>

Our sacred gifts of Fire, Water, Earth, or Wind, are connected, and an impact or alteration to one will impact all others. Our Anishinabe Knowledge teaches us the value of considering cumulative environmental effects and our worldview must be considered. The updated cumulative environmental assessment conducted by OPG does not consider such interconnectedness and thus, in our view is unable to properly assess cumulative environmental effects.

## **5. Mitigation and Monitoring Commitments Require Anishinabe Involvement**

The OPG study provides an extensive list of all the mitigation and monitoring commitments for each identified adverse effect caused by the L&ILW DGR. Due to the extensive nature of the list of mitigation commitments, we are not convinced that adverse impacts to the environment will not occur.

The mitigation and monitoring plan needs to involve the local First Nations’ Peoples and Traditional Knowledge. To date, our Nations are not aware of a First Nation monitoring plan whose purpose is to provide Traditional Knowledge and Guardianship on mitigation efforts. Our Anishinabe Nations’ responsibility to protect our sacred gifts of Fire, Water, Earth, and Wind necessitates that we be involved in the mitigation and monitoring for this Project. As the L&ILW

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<sup>21</sup> *CEAA 2012*, s 19(a).

<sup>22</sup> *CEAA 2012*, s 19(3).



DGR is likely to be built near Lake Huron, which forms part of our traditional territory, we have a responsibility to protect the health of the environment.

The Joint Review Panel and OPG must continue to meaningfully consult our Anishinabe Nations at every stage of the L&ILW DGR. Specifically, with respect to the mitigation and monitoring commitments for the L&ILW DGR.

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In closing, UCCMM insists that our Anishinabe Knowledge and our oral traditions be respected. The Crown bears a fiduciary responsibility to act honorably and all parties are legally bound to respect Anishinabe Nations' inherent rights. We look forward to your response.