



## CHIEFS AND COUNCILS SAUGEEN OJIBWAY NATION

*Chippewas of Saugeen,  
Chippewas of Nawash,*

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March 7, 2017

The Honourable Catherine McKenna  
Minister of Environment and Climate Change  
Environment and Climate Change Canada  
200 Sacré-Coeur Boulevard  
Gatineau QC K1A 0H3

**Delivered by Email:** [catherine.mckenna@canada.ca](mailto:catherine.mckenna@canada.ca)

Dear Minister McKenna:

**Re: SON Preliminary Comments on OPG Response to Information Requested by the Minister of Environment and Climate Change**

On December 28, 2016, Ontario Power Generation (“OPG”) submitted a number of reports respecting its proposed Deep Geological Repository for Low and Intermediate Level Radioactive Waste Project (the “DGR Project”) in response to an information request that you issued on February 18, 2016. In a meeting held on February 3, 2017, we conveyed initial comments regarding these reports to representatives of the Canadian Environmental Assessment Agency (“CEAA”). We understood from that meeting that over the coming months CEAA, as well as your office, will work with SON to understand and address our concerns through an ongoing consultation process. We write this letter to provide some preliminary comments on OPG’s supplementary reports that we hope will frame our ongoing consultations relating to the review of the DGR Project specifically, as well as our consultations respecting the resolution of nuclear issues within the SON Territory more broadly.

Our comments relate to: (1) concern with the absence of new and relevant analysis contained in the reports; and (2) the critical role of commitments from OPG and the Nuclear Waste Management Organization (“NWMO”) to SON as mitigation and accommodation measures.

**Information Submitted by OPG Lacks New and Relevant Analysis**

SON has made its position clear that the DGR Project, as well as NWMO’s project for a used nuclear fuel repository, stand to have profound and lasting impacts on our communities, rights and interests. We have communicated this position, and articulated our many concerns, through submissions to regulatory

and environmental assessment processes, correspondence with your office, and directly with you at the good meeting that we had last year on February 9, 2016.<sup>1</sup>

We have also made clear our concerns with the environmental review process itself, the inadequacies of the Joint Review Panel (the “Panel”) for the DGR Project, and the Panel’s final report.<sup>2</sup> Specifically, we have raised issue with the improper connections drawn by the Panel between the DGR Project and NWMO’s project for a used nuclear fuel repository (the “APM DGR”) – this after the Panel had refused to allow the potential impacts of that process to be considered in the cumulative effects assessment for the DGR Project.

On February 18, 2016, you requested that OPG undertake a study of alternate locations for the DGR Project and provide an updated analysis of the cumulative environmental effects of the DGR Project in light of the NWMO process. We understood this request as aligned with and, at least in part, in response to the issues raised by SON over the years. It was our hope that this new data and analysis would help address some of SON’s key concerns respecting the DGR Project, and would assist the SON communities as they consider the nuclear issues within the SON Territory and the DGR Project as part of the SON-OPG commitment process.

Unfortunately, we believe that the information submitted by OPG provides little in the way of new data and analysis. The cumulative effects analysis fails to provide a useful assessment of the cumulative effects of the DGR Project and the APM DGR. The analysis omits consideration of the most serious impacts which SON raised during the review process, including impacts that the disposal of nuclear wastes in SON Territory stands to have on the spiritual and cultural relationship between the SON people and their Territory, their use of lands, waters and resources; and the potentially devastating effects on the SON economies. The alternate locations analysis is similarly deficient. While it considers the incremental costs, risks, and environmental effects associated with transporting waste away from the Bruce facility to an alternate greenfield site, it fails to acknowledge the reduction in risk and harm to the SON communities that the selection of an alternate location would have. It also fails to address in any useful way the issue of the proximity of the proposed DGR Project to Lake Huron.

#### Updated Analysis of the Cumulative Environmental Effects

SON has long raised concerns respecting the connection between the DGR Project and the NWMO’s process to select a site for a used nuclear fuel repository.<sup>3</sup> As we shared with you in our letter dated

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<sup>1</sup> See, for example, Saugeen Ojibway Nations’ Application for a Determination on the Scope of Review of OPG’s DGR Project and the Inclusion of a Project for the Long-Term Management of High Level Nuclear Wastes, August 9, 2012 (CEARIS Ref. Doc. #687) (“SON Application of August 9, 2012”); Submissions of the Saugeen Ojibway Nation—Hearing for Deep Geologic Repository for Low and Intermediate Level Radioactive Waste, August 16, 2013, (CEARIS Ref. Doc. #1427) (“SON Oral Intervention of August 16, 2013”); Saugeen Ojibway Nation Supplementary Written Submissions, July 21, 2014; Hearing Transcript, September 25, 2013 (CEARIS Ref. Doc. # 1611); Hearing Transcript, October 11, 2013 (CEARIS Ref. Doc. # 1704); Hearing Transcript, October 30, 2013 (CEARIS Ref. Doc. # 1741); Hearing Transcript, September 17, 2014 (CEARIS Ref. Doc. # 2129); Closing Remarks of the Saugeen Ojibway Nation, October 9, 2014 (CEARIS Ref. Doc. # 2170) (“SON Closing Remarks”); Preliminary Technical Comments of the Saugeen Ojibway Nation on the Proposed EA Conditions and Related JRP Recommendations for the Deep Geologic Repository for Low and Intermediate Level Radioactive Waste Project, September 8, 2015 (CEARIS Ref. Doc. # 2686); Letter from Chief Greg Nadjiwon, Chippewas of Nawash Unceded First Nation, and Chief Vernon Roote, Chippewas of Saugeen First Nation, to the Honourable Catherine McKenna, Minister of Environment and Climate Change, November 12, 2015 (“November 12, 2015 Letter”).

<sup>2</sup> November 12, 2015 Letter, *supra* note 1.

<sup>3</sup> See, for example, SON Application of August 9, 2012, *supra* note 1; Supplementary Submission, February 25, 2013 (CEARIS Ref. Doc. #898); SON Oral Intervention of August 16, 2013, *supra* note 1, pp. 57–61, 70–72; SON

November 12, 2015, in our view, the Panel fell into significant error when it refused SON's motion to consider the cumulative effects of the APM DGR and later when it made comments in its report about the general suitability of the Bruce site and its geological formations for the disposal of nuclear wastes. For that reason, SON welcomed your request to OPG that it provide an updated analysis of the cumulative environmental effects. However, the information provided by OPG has done little to answer the questions of the SON communities respecting the cumulative impacts that the two projects would have on our people, our Territory, and our future.

Fundamentally, OPG's analysis fails to consider the permanent impacts that the projects stand to have on SON's cultural and spiritual connection with its Territory. During the hearings, SON explained at length the special relationship between SON and its Territory, the place of the earth as the first order of creation upon which the other orders of creation depend, and the spiritual impact that the construction of the DGR Project in the rock of the earth would have.<sup>4</sup> OPG's analysis includes no discussion at all of the impact the construction of two repositories in the heart of SON Territory, storing almost all of Canada's nuclear wastes, might have on the spiritual and cultural identity of SON. There is only a cursory treatment of stigma effects associated with nuclear waste repositories and the potential effects that living in proximity to nuclear waste repositories can have on mental and social well-being – two additional subjects on which SON made substantive submissions.<sup>5</sup>

Instead, OPG's analysis focuses on a narrow subset of impacts which, while important, to the SON communities, are quite minor relative to the more fundamental and lasting concerns identified above. For example, section 5.7 is aimed at addressing cumulative effects for the socio-economic environment but addresses nothing beyond noise levels. Section 5.6 concerning human health impacts, discusses air emissions due to motor vehicle use and fails to acknowledge any broader health considerations.<sup>6</sup> The narrow focus adopted here must be compared with the comprehensive assessment contemplated by the Seaborn Panel which, in its assessment of the impacts associated with the deep geological disposal of nuclear fuel wastes some twenty years ago, recognized the potential "that concerns about radiological risks will lead to high levels of stress in some individuals," that a project for the disposal of nuclear fuels wastes could "strain the social cohesion of a given community," cause stress that would "manifest itself in behaviour detrimental to a healthy community," and with respect to Aboriginal people, could "disrupt a community's social and cultural fabric."<sup>7</sup>

OPG's conclusion that there are "no likely adverse cumulative effects given the location of the potential site for the APM DGR and the limited environmental effects of the DGR Project at the Bruce Nuclear site and the APM DGR"<sup>8</sup> feels unfounded and superficial. The analysis used in support of this conclusion quite simply fails to provide SON and its people with a meaningful understanding of the

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Closing Remarks, *supra* note 1, pp. 7–9. SON raised these same issues in its oral submissions, as well as in meetings with CNSC and CEAA from the outset.

<sup>4</sup> See, for a brief summary, SON Oral Intervention of August 16, 2013, *supra* note 1, pp. 61 – 63, 73. See also, Randall Kahgee Affidavit, Appendix to SON Oral Intervention of August 16, 2013.

<sup>5</sup> Following its conclusion that the DGR Project is not likely to cause significant adverse cumulative environmental effects, OPG states that it will continue to monitor public attitudes toward the DGR Project at the Bruce site, and to include explicit consideration of stigma effects. Ontario Power Generation, "Updated Analysis of Cumulative Environmental Effects," December 2016 (CEARIS Ref. Doc. #2883), p. 40 ("Cumulative Effects Analysis"). For SON's submissions on stigma effects, see, for example, SON Oral Intervention of August 16, 2013, *supra* note 1, pp. 29 – 51.

<sup>6</sup> Cumulative Effects Analysis, *supra* note 5, pp. 29 – 32.

<sup>7</sup> Seaborn Panel Report, 1998.

<sup>8</sup> Cumulative Effects Analysis, *supra* note 5, p. v.

potential cumulative effects and fails to meet our concerns. Likewise, this conclusion and analysis, we say, does not add meaningfully to the record of this environmental assessment.

### Alternate Locations Study

#### *Reduction of Risk and Perception of Risk Ignored*

OPG's analysis respecting the environmental effects of alternate locations for the DGR Project shares similar shortcomings.<sup>9</sup> OPG's study assumes a rough equivalency in safety and residual environmental impacts from all alternative DGR locations, and focuses largely on incremental cost considerations.<sup>10</sup> Where a more detailed comparative environmental impacts assessment is undertaken, it focuses on a narrow sub-category of effects—principally those caused by the transportation of waste and with the development of a greenfield site. This, in combination with an analysis of incremental transportation costs and risks, project costs, and additional project uncertainties, leads OPG to reaffirm its position that the Bruce site is the preferred location for the DGR Project.<sup>11</sup>

OPG's analysis seeks to justify additional harms and risks to SON and its Territory on the basis of historical harms. Further, it gives no consideration to the potential reduction of risk and harm that an alternate location, or alternative approaches, could offer. The new analysis does not give SON comfort that OPG's preferred DGR site is the best and safest alternative, but rather leaves us with impression that it is the cheapest acceptable solution.

From the perspective of SON, the very same considerations that lead OPG to select the Bruce site as its preferred location—namely, the existing development at the site—could militate *against* situating the DGR Project here. The Bruce site already houses the world's largest operating nuclear facility, forty percent of Canada's used nuclear fuel, and almost all of Ontario's low and intermediate level waste. For the last forty years, the SON communities have had to bear the risks and impacts associated with those facilities. While the analysis provided by OPG considers the incremental costs and environmental effects associated with selecting an alternate location, it fails to consider the benefits associated with reducing harm and risk to the SON communities.

In its report, the Seaborn Panel noted with respect to environmental assessments:

Assessment of the safety and environmental implications of any major proposal is likely to involve related social and ethical questions. Nowhere is this more evident than in the nuclear field, for reasons that we shall refer to frequently in this report. Technical, social and ethical aspects of nuclear fuel waste management are inextricably related and must be viewed within the full context of contemporary societal thinking...<sup>12</sup>

As the Seaborn Panel recognized, an environmental assessment should not consider environmental effects in a narrow and technical manner separate from broader social and ethical considerations.

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<sup>9</sup> Ontario Power Generation, "Study of Alternate Locations Main Submission," December 2016 (CEARIS Ref. Doc. #2883) ("Study of Alternate Locations").

<sup>10</sup> See, for example, Study of Alternate Locations, *supra* note 9, pp. v, 55, 85 which summarize the increased environmental effects associated with a deep geological repository at an alternate location (*e.g.*, greenhouse gas emissions caused by the transportation of waste, the effects on wildlife and vegetation caused by site clearing and the construction of new facilities, etc.).

<sup>11</sup> *Ibid*, p. v – vi.

<sup>12</sup> Seaborn Panel Report, *supra* note 7.

Without adopting a broader, more contextual, approach to the selection of preferred sites, considerations such as noise level and the prevalence of wildlife-vehicle strikes factor into decision-making around the siting of significant nuclear projects, while the social and ethical considerations around distributing risk, and of not further disrupting the spiritual and cultural connection of a people to its territory do not.<sup>13</sup> From the perspective of SON, OPG's alternate locations analysis has failed to address the questions most important to SON and its communities.

### *Inadequate Treatment of Concerns Relating to Proximity to Water*

For SON and its communities, the safety and prudence of the proposed location of the DGR Project on the shores of Lake Huron remains a driving question. In its letter of September 7, 2016 to OPG, CEAA explicitly requested that OPG's analysis assume that the alternate sites would have different geographical and hydrological characteristics as the preferred site.<sup>14</sup> Through this request, we understood CEAA to have signaled to OPG the need to directly address concerns relating to the proximity of the DGR Project to Lake Huron. Again, the analysis is cursory. Instead of providing an analysis of the relative risk associated with different sites for the DGR Project, and offering both a quantitative and qualitative comparative analysis, OPG simply states that "with an appropriate geology and design," the proximity of the DGR Project to a water body is immaterial:

With an appropriate geology and design, the proximity of a water body to the DGR is not relevant because the movement of water or gas, even if it was released from the DGR, would not reach the water body until the radioactivity of such water or gas had diminished to the levels generally found naturally occurring throughout Ontario.<sup>15</sup>

This, of course, does not speak to the concerns or fears being expressed by SON communities—or, we expect, the population more generally—with respect to the proximity of the DGR Project to Lake Huron. It simply begs the question of suitability and dependability of design. Further, OPG refers to findings of the International Expert Panel that "L&ILW repositories have been judged in the licensing process to be safe in locations next to bodies of water (the Baltic Sea, in the case of Sweden and Finland and the Pacific Ocean in the case of South Korea) or for shallow land disposal as is the case in the United States."<sup>16</sup> While this may be true, no discussion is provided on why those international sites were selected, what alternatives they may have had and what compromises were accepted.

### **Commitments to SON as Mitigation and Accommodation Measures**

The DGR Project and NWMO's used nuclear fuel DGR represent two of the most significant industrial projects ever proposed in Canada's history. SON has long held that these projects, if located in SON Territory, will permanently alter our future, with dramatic impacts on our culture, territory and way of life. As we have said, these are not impacts that can be adequately understood or addressed through an

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<sup>13</sup> See, for example, Study of Alternate Locations, *supra* note 9, p. 42. SON does not disagree that consideration should be given to wildlife-vehicle strikes but takes issue with the fact that such effects are considered in determining what constitutes the preferred site, while the effects on SON and its spiritual and cultural connection to its territory caused by a project that proposes to dispose of nuclear waste that will remain radioactive for tens of thousands of years are not.

<sup>14</sup> Letter from Heather Smith, Vice-President Operations, Canadian Environmental Assessment Agency, to Laurie Swami, Senior Vice President Decommissioning and Nuclear Waste Management, Ontario Power Generation, September 7, 2016 (CEARIS Ref. Doc. # 2875).

<sup>15</sup> Study of Alternate Locations, *supra* note 9, p. 31, 34, 44.

<sup>16</sup> *Ibid*, p. 84, 86.

environmental assessment process; rather, they must be the subject of ongoing processes between SON, the proponents, and the Crown.

When the Joint Review Panel for the DGR Project released its report on the DGR Project, we explained to you that the Panel's refusal to acknowledge the SON-OPG commitment was "concerning" and "troubling" and, if unaddressed, would act "to undermine an historic commitment and tool of reconciliation between a corporation of the Ontario Crown and SON." We also explained that given the Panel's improper statements on the general suitability of SON Territory for deep geological repositories and the connection drawn between the DGR Project and NWMO's process, "SON must receive a support of the SON communities."

We should note here that since the time of our last meeting, SON has received that commitment. NWMO, in a letter dated May 30, 2016, committed to SON that it will not select a site for the deep geological repository for Canada's used nuclear fuel in SON Territory without the consent of the SON communities.<sup>17</sup>

The commitments from OPG and NWMO to SON and its communities are not mere social commitments; they are necessary mitigation and accommodation measures, and the only mechanisms suitable to address the nature and seriousness of SON concerns respecting the two proposed DGR projects. The additional reports submitted by OPG demonstrate the limits of environmental assessments to address the full range of impacts on the rights and interests of SON, and, consequently, rely on the commitments to SON as mitigation mechanisms.

As explained above, the new reports submitted by OPG fail to adequately address, or even to characterize in some cases, the potential impacts to the SON communities. In the information submitted, OPG and NWMO themselves acknowledge that additional processes—pursuant to the commitments given by OPG to SON, and more recently, by NWMO to SON—are required to determine the potential impacts to SON, the significance of those impacts, and the manner in which they can be mitigated:

The APM site selection process involves working in partnership with local communities, and specifically with local Aboriginal peoples. This approach means that any selected site would have considered Indigenous Knowledge, would have identified relevant effects, and the plans would have included appropriate mechanisms to avoid or mitigate any effects. NWMO has specifically committed that an APM DGR would not be sited in the traditional territory of Saugeen Ojibway Nation (SON) - the Chippewas of Nawash Unceded First Nation and Saugeen First Nation - without their consent. Any siting within this territory would be informed by discussions with the SON regarding potential effects and their mitigation.<sup>18</sup>

... OPG has committed to the SON that OPG will not move forward with the construction of a deep geologic repository for L&ILW until the SON community is supportive of the project. Further, OPG and SON have committed to the good faith, informed resolution of potential

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<sup>17</sup> Letter from Ken Nash, President of the Nuclear Waste Management Organization, to Chief Greg Nadjiwon, Chippewas of Nawash Unceded First Nation, and Chief Vernon Roote, Chippewas of Saugeen First Nation, May 30, 2016.

<sup>18</sup> Nuclear Waste Management Organization, "APM DGR Preliminary Description," December 2016 (CEARIS Ref. Doc. #2883).

project impacts through the ongoing engagement between SON and OPG. The engagement process between SON and OPG is strong and ongoing...<sup>19</sup>

As SON has said in the past, given the limitations of the environmental assessment process to address impacts to SON, the commitments are not mere acknowledgments of social commitments to SON; they are the mitigation mechanisms in respect of potential impacts to SON that can only be identified, understood, and resolved through a process with SON and its communities. In the absence of the commitments, there are serious potential adverse effects on SON which have not been addressed, and in some instances—as in the case of cumulative effects—not even described. For that reason, it is only on the basis of these commitments—and their implementation and fulfillment—that a decision can be made on whether the DGR Project is likely to cause significant adverse environmental effects. For this reason, and as we have stated consistently, the commitments from OPG and NWMO to SON and its communities must be made conditions of any approval respecting the DGR Project.

### **Need for Ongoing Consultation on DGR Project, APM and Nuclear Issues More Broadly**

Since August 7, 2013, SON and OPG have been working together pursuant to the SON-OPG commitment to understand and address legacy issues relating to OPG's operations within the SON Territory and to understand issues relating to the proposed DGR Project. This work together has been collaborative, constructive and respectful and is an example of a new and necessary kind of relationship between First Nations and proponents. SON has also begun to formalize its relationship with NWMO under the commitment it made to SON on May 30, 2016. SON is optimistic that this too will develop into a constructive and positive relationship.

Engagement between SON and proponents is essential to resolving the nuclear issues in SON Territory, but it is not sufficient. As we wrote in our November 12, 2015 letter, SON and Canada should work to establish a process for a renewed and positive engagement on nuclear issues within SON Territory. The nuclear issues facing SON and its communities are wide-ranging and complex. The solutions to these challenges will require the participation and support of the federal Crown, not only as fulfillment of constitutional obligations to SON, but as SON's Treaty partner through a nation-to-nation relationship. The commitments from OPG and NWMO to SON provide a solid foundation and framework to begin to address the nuclear issues in SON Territory. And as explained above, they represent critical mitigation mechanisms for the two proposed DGR projects. However, the commitments must now be embedded in a broader consultation process between SON and Canada respecting the nuclear issues facing our communities. In this way, the commitments will represent not only mitigation mechanisms, but accommodations that will ultimately support reconciliation efforts between us.

From the outset, we have stated that the current environmental review process is only a mechanism in support of direct consultation processes between Canada and SON.<sup>20</sup> We understand that CEAA and your office are now in a process to consider and respond to the additional information provided by OPG. We also understand that you have planned for a process whereby SON, CEAA, and representatives from your office will meet to further discuss the information submitted by OPG as CEAA continues its review of the information, and prior to your issuance of a decision statement. We believe this is necessary and helpful. In addition, we would ask that meetings be arranged with your representatives so that we can

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<sup>19</sup> Cumulative Effects Assessment, *supra* note 5, p. 40.

<sup>20</sup> See, for an overview of SON's position respecting the relation between the environmental assessment process and the Crown's consultation and accommodation obligations, Letter from Chief Greg Nadjiwon, Chippewas of Nawash Unceded First Nation, and Chief Lester Anoquot, Chippewas of Saugeen First Nation, to the Honourable Catherine McKenna, Minister of Environment and Climate Change, December 23, 2016.

begin to structure the consultation process between us to address the broader nuclear issues within the SON Territory. We hope that the above comments, together with our past submissions, will serve as a useful basis on which to pursue these discussions.

We thank you for your attention and look forward to our next meeting.

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Chief Greg Nadjiwon  
Chippewas of Nawash Unceded First Nation

Chief Lester Anoquot  
Chippewas of Saugeen First Nation

c.c. Cindy Parker, Crown Consultation Coordinator, CEAA



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