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May 14, 2020

The Honourable Prime Minister Justin Trudeau
House of Commons
Ottawa, Ontario K1A 0A6

Sent by email Justin.Trudeau@parl.gc.ca

Re: Canada's Need for an Overarching Indigenous Cooperation Agreement with the Algonquin Nation for Chalk River Nuclear Site Proposed Developments

Dear Honourable Prime Minister Trudeau:

First of all, I hope this note continues to find you and your family in good health. Our Nation greatly appreciates the tremendous efforts you, your Cabinet, and medical officer are making to safeguard Canadians from the health, social and economic effects of Covid-19. It is in this time of extraordinary caution that I am reaching out to you concerning issues we have with three proposed nuclear project proposal environmental assessments and potential operating licences on Algonquin territory at the Chalk River Nuclear Site, namely, the Near Surface Disposal Facility, Nuclear Power Demonstration Project and Micro Modular Reactor Test Project.

One major area of uncertainty amongst these active project assessments are the vast inconsistencies in the environmental assessment processes currently being employed by the Canadian Nuclear Safety Commission (CNSC) as a regulator and the Impact Assessment Agency of Canada (IAAC) as the federal lead agency for impact assessments. Perhaps most importantly, we are inquiring as to why the CNSC as a nuclear regulator continues to have a mandate of coordinating environmental assessments when your government has modernized impact assessment processes and created a single specialized agency responsible for coordinating consultations with indigenous peoples and the Canadian Energy regulator? In addition, we're questioning the effectiveness of CEAA 2012 as there is no option for panel reviews for nuclear facilities under the obsolete Act. In our view, the legislative terms under which these major nuclear projects are currently being reviewed needs your immediate attention and interim measures to be negotiated with our Nation(s).

As background, we have fully supported your government in meeting your target to reform environmental assessment legislation. On May 31, 2019, when your government requested our comments specific to nuclear energy projects under the Regulations Designating Physical Activities (the “Project List Regulation”) to advance the new *Impact Assessment Act* into effect both Kebaowek First Nation (KFN) and the Algonquin Anishinabeg Nation Tribal Council (AANTC) strongly supported the Expert Panel’s conclusions that “regulation and environmental assessment are two quite distinct functions that require different processes and expertise.”¹

Accordingly, KFN and AANTC insisted upon having nuclear impact assessments conducted by joint review panels, rather than by the CNSC itself. Significantly, during her testimony before the Standing Senate Committee, the President of the CNSC Rumina Velshi who we have cc’d in this letter expressed no objection to the IAA’s proposal to have designated nuclear projects assessed by review panels that include appointees from the CNSC.² We are therefore requesting that your government prescribes properly framed, fairly conducted, adequately staffed and sufficiently resourced joint review panel hearings as an interim legislative measure to represent the highest and best form of public participation in the impact assessment process for the Chalk River project reviews.

Not only do review panels offer parties an important opportunity to present (or challenge) evidence on the subject matter of the hearing, but they also enhance the overall credibility, completeness and fairness of the information-gathering stage and significantly assist in facilitating informed decision-making. I think your government will agree this should be a shared objective reflecting both modernized legislation and our evolving Nation to Nation relationship.

CNSC Failing to Support Meaningful Indigenous Participation

We have raised these concerns with CNSC both verbally and in writing on November 7, 2019 as KFN made a presentation at a scheduled commission hearing and requested the immediate development of a Nation to Nation Consultation Framework Agreement or Indigenous Cooperation Agreement in advance of any further environmental assessment work with our community(s). It was evident post hearing that the CNSC possesses great experience in regulating their respective nuclear sector, however they have little or no institutional expertise in Indigenous engagement. The Chair deferred KFN’s request to CNSC Indigenous liaison staff whom have since failed to expedite the development of the agreement and interim support towards meaningful Indigenous Participation in the current processes.

For example, CNSC staff acted in a discretionary manner by recently refusing AANTC funding support to review the project description for the Global First Power Micro Modular Nuclear Reactor project description and suggested KFN complete this work for AANTC (pg.4 attached)? We will not accept these meager or discretionary consultation methods offered by the CNSC given the scale and importance of these environmental assessments and potential impacts. As such, we request that the environmental assessment of the Global First Power Micro Modular Reactor project, including the upcoming June 1, 2020 deadline for interventions at the hearing be suspended until adequate provisions for Indigenous cooperation with our Nation are in place.

¹ Expert Panel Report, pages 50 to 51

² Evidence (February 7, 2019): <https://sencanada.ca/en/Content/SEN/Committee/421/enev/54526-e>.

As you are aware, Indigenous consultation in Canada is not discretionary, it is the Duty of the Crown³ and CNSC is failing this duty. For instance, we were not consulted on the relicensing of the Chalk River site in 2018. Consultation requires more in-depth arrangements and follow-up than CNSC staff sending or not sending out emails to our communities. Furthermore, this continuing behavior is not in sync with modernized Canadian environmental processes and we can not submit to imposed or lessor provisions under the *Nuclear Safety and Control Act* (NSCA), the terms of *REGDOC-3.2.2, for Indigenous Engagement* [5], or CNSC policies – known as REGDOCs – which limit the scope of studies that can be carried out in order to properly analyze potential nuclear projects that have significant potential to impact our territory(s).

It is for these reasons we object to CNSC continuing to lead the Chalk River assessment processes and are requesting a meaningful and sustained solution from your office. We specifically require clarification on how CNSC's current approach can interface with new enacted advancements in IA legislation, as the EAs at the Chalk River site are continuing under CEAA 2012. Under CEAA 2012, the CNSC remains the sole authority for EA decision making, unlike the newly enacted IAA, where a CNSC Commissioner would be among the membership on an a review panel. We also seek your guidance on developing a comprehensive Indigenous Cooperation Agreement with the new Impact Assessment Agency of Canada (IAAC) and the CNSC concerning the Chalk River projects to:

- a) clarify interim legislative provisions, roles and responsibilities in the EA process; conduct project EAs that are guided by the principles and commitments of fair and mandatory Indigenous early engagement that effectively assess the potential adverse impacts of the Projects in due consideration that our Nation's jurisdiction of course flows not from Agency legislation but rather from Algonquin inherent governance, laws, and s.35 Constitutionally protected rights and title.
- b) identify the means by which the Agency, CNSC as well as the proponents CNL and Global First Power shall consult with our communities in the context of our evolving Nation to Nation relationship.

Looking forward to your timely reply, we remain.



Grand Chief Verna Polson
Algonquin Anishinabeg Nation Tribal Counsel



Chief Lance Haymond
Kebaowek First Nation

CC/

CNSC President Rumina Velshi: cpsc.ceopresident-pdpcresident.ccsn@canada.ca

Honourable Seamus O'Regan Minister of Natural Resources Seamus.ORegan@parl.gc.ca

Honourable Minister Jonathan Wilkinson Minister of Environment and Climate Change Canada ec.ministre-minister.ec@canada.ca

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³ Haida Nation v. British Columbia (Minister of Forests)
<http://scc.lexum.umontreal.ca/en/2004/2004scc73/2004scc73.html>.

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 Chief David Kistabish, Conseil de la Première Nation Abitibiwinni
 Chief Regis Penosway, Conseil des Anicinapek de Kitcisakik
 Chief Sasha Wabie, Timiskaming First Nation
 Chief Steve Mathias, Long Point First Nation
 Chief Casey Ratt, Algonquins of Barriere Lake
 Chief Lisa Robinson, Wolf Lake First Nation
 Councillor Frankie Cote, Kitigan Zibi Anishinabeg
 Chief Kirby Whiteduck, Algonquins of Pikwakanagan First Nation
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Attachment A

RE: Participant Funding Program - Global First Power's proposed project Inbox

Zenobi, Adam (CNSC/CCSN) <adam.zenobi@canada.ca> Mon, Feb 17 2:58 PM
 to AANTC, me, Samantha, Stacy, Adam

Hello Crystal-Lee,

Unfortunately, the original deadline for this funding opportunity was February 10, 2020. The CNSC's independent Funding Review Committee has already reviewed the applications and the limited amount of funding available for this opportunity (\$20,000) has been awarded.

However, Kebaowek First Nation did apply and will be awarded funding. If it works for you and Rosanne, would it be possible for Kebaowek First Nation and AANTC to collaborate on this stage of the environmental assessment (EA) process covered by this funding opportunity (i.e. review of the documentation related to the EA scoping decision)?

Please note that there will be more funding opportunities related to Global First Power's (GFP) Micro Modular Reactor. Once the CNSC makes a decision on the scope of the EA, a second participant funding opportunity will be announced to assist in reviewing GFP's draft environmental impact statement. A third participant funding opportunity will be announced at a later date to assist in reviewing the CNSC's EA report and related documentation and to participate in the Commission's yet-to-be-announced public hearings. These funding opportunities will be much larger (\$150,000 each) and cover a wider scope of activities. The CNSC will make sure AANTC is informed of these funding opportunities once they are announced. Furthermore, I would be happy to help you with these and other funding applications should AANTC be interested.

Thank you,
 Adam Zenobi