



**KEBAOWEK FIRST NATION
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January 31, 2022

BY EMAIL

Canadian Nuclear Safety Commission
c/o Mme Rumina Velshi, President
280 Slater Street
Ottawa, ON K1P 5S9

VIA EMAIL cnscc.eopresident-pdpresident.ccsn@canada.ca

Dear Mme. Velshi,

Re: CNSC Kebaowek First Nation (KFN) Request for Stop of NSDF Hearing Schedule

First, I hope this letter finds you and your family well during these trying times.

Second, and for the record I would like to address Kebaowek First Nation's concerns about the notice of hearing that was received January 14, 2022 from CNSC staff that a mail drop to our community members would be carried out by Canada Post January 24, 2022 (attached to this letter as Appendix 1). This type of unilateral unstructured notification to our community members from CNSC staff about the upcoming Commission Hearings for Canadian Nuclear Laboratories' proposal to construct a Near Surface Disposal Facility (NSDF)¹ on Algonquin Rights and Title land is unacceptable and goes against the CNSC's statements of reconciliation and working together with open dialogue for this project. We remind you that Kebaowek First Nation's section 35 rights are held collectively and, as such, you should be consulting with Kebaowek First Nation leadership as the elected representative of the rights holding group.

In our view, hearing notices mailed to our community members do not make up for the lack of meaningful consultation by CNSC and the Proponent CNL with Kebaowek First Nation and other left out Algonquin communities since review of the project began in 2016. Nor does it negate the unresolved issue of the CNSC Commission decision to accept the NSDF EIS as complete and proceed to hearings without the required Indigenous engagement with KFN and other Algonquin communities necessary to

¹ Notice of Hearing: <http://nuclearsafety.gc.ca/eng/the-commission/pdf/Notice-PublicHearing-CNL-NSDF-22-H7-e.pdf>

uphold the Honour of the Crown. We have raised this issue on numerous occasions including most recently at the CNL Regulatory Oversight Review Hearing November 25, 2021. ²

We continue to bring to your attention the ways in which the CNSC has impaired our ability to fully participate, in a meaningful way, and our increasing concern given:

- A hearing has been scheduled to consider the licence application and federal environmental assessment (EA) under the *Canadian Environmental Assessment Act, 2012* (“CEAA 2012”) for the NSDF, and decisions anticipated on these matters in respect of lands which overlap with Kebaowek’s unceded lands and traditional territory;
- The licensing and environmental assessment decisions rendered by the CNSC, in its role as nuclear regulator and authority for environmental assessment, pose significant and long-term impacts Kebaowek’s constitutionally protected Aboriginal rights; and
- The CNSC as yet, has not discharged its duty to consult nor undertaken consultation with Kebaowek before deciding to proceed with the licensing and EA hearing for the NSDF.

Thirdly, there has been the assumption by CNSC staff that the Algonquin Anishinaabeg Nation Tribal Council (AANTC) was representing its members communities in the NSDF consultation when in fact they had a funding agreement with CNSC to review environmental studies but had no mandate or resolution from the Chief’s to represent the community Rights and Title holders in the NSDF consultation. As you are aware the AANTC has withdrawn from the CNSC funding agreement because of this confusion. As noted in *R v. Adams, 1996* government “may not simply adopt an unstructured discretionary administrative regime which risks infringing Aboriginal rights in a substantial number of applications in the absence of some explicit guidance.” KFN remains seriously concerned about the CNSC administrative tribunals unstructured discretion in consultation activities with KFN and the Algonquin Nation members.

As a comparison Kebaowek, Wolf Lake and Temiskaming First Nations are currently engaged in an environmental assessment under CEAA 2012 at the Temiskaming Dam Complex on the Ottawa River. Here the Federal proponent Public Services and Procurement Canada (PSPC) and the communities have developed a consultation framework agreement in advance of carrying out the assessment. Furthermore, UNDRIP principles are incorporated in the review as part of this rights based environmental assessment. It appears that the TDQRP Federal Consultation is much more robust on Indigenous consultation and engagement than the CNSC regulatory scheme. It is for these reasons that for some time KFN has been seeking to provide some structure to the exercise of the NSDF consultation requesting the CNSC funding of an over arching Consultation Framework Agreement.

In conclusion, we provide this letter as a follow up noting we are just now beginning to work on the Consultation Framework Agreement with Kebaowek to be established jointly with the CNSC and the federal Ministry of Natural Resources (NRCan). This is a process KFN has repeatedly called for and only now, once the hearing dates have been set, are CNSC Staff pushing to meet with us on a frequent basis.

We are once again requesting that the CNSC suspend hearings on the NSDF **under Rule 14 of the CNSC's [Rules of Procedure](#), noting Rule 3 allows the Commission to vary their rules for "considerations of fairness". This will provide the time for a mutually agreeable Consultation Framework Agreement**

² <https://nuclearsafety.gc.ca/eng/the-commission/pdf/Transcript-2021-11-25-Meeting-e.pdf> p.153

and workplan for the NSDF is in place with KFN, which respects and upholds the Honour and Duty of the Crown.

Given the time sensitive nature of our request, we respectfully ask for a decision of the Commission on our request to suspend the hearing timeline by February 15, 2022. Our requests herein do not mean Kebaowek recognizes the CNSC's authority to have issued decision on the Chalk River NSDF EIS being complete and calling the hearings. This correspondence including our requests do not constitute a waiver nor fulfillment of our s. 35 constitutional rights and the Crown's ongoing duty to consult and accommodate.

Meegwetch,



Chief Lance Haymond
Kebaowek First Nation

CCs/

The Honourable Jonathan Wilkinson, P.C., M.P., Minister of Natural Resources Canada
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