



CODIFICATION OF CURRENT PRACTICE: CANADIAN NUCLEAR SAFETY COMMISSION (CNSC) COMMITMENT TO ABORIGINAL CONSULTATION

March 22, 2010

CNSC'S COMMITMENT AND ONGOING OBLIGATIONS

- The CNSC as an agent of the Government of Canada and as Canada's nuclear regulator recognizes and understands the importance of consulting and building relationships with Canada's Aboriginal peoples. The CNSC ensures that all its licensing decisions under the *Nuclear Safety and Control Act* and environmental assessment decisions under the *Canadian Environmental Assessment Act* uphold the honour of the Crown and consider Aboriginal peoples' potential or established Aboriginal or treaty rights pursuant to section 35 of the *Constitution Act, 1982* (together, the "Aboriginal Interests").
- The CNSC recognizes that Aboriginal peoples have concerns with regard to the nuclear sector and that it is important to seek opportunities to work together in ensuring the safe and effective regulation of nuclear energy and materials. The CNSC will continue to communicate "objective scientific, technical and regulatory information" about CNSC activities and the effects of the nuclear industry in Canada as per the objectives of the *Nuclear and Safety Control Act*.

CNSC'S APPROACH TO ABORIGINAL CONSULTATION

Good Governance

- The CNSC strives to meet its commitment to excellence, in part, through a good governance approach to effective and well-managed Aboriginal consultation processes when Aboriginal rights or interests could be impacted.

Guiding Principles

- The CNSC is also mindful of its role as a statutory administrative tribunal exercising quasi-judicial powers, which confers on it the duty to treat fairly all participants in its proceedings. When developing and implementing consultation processes, the CNSC takes into account the "guiding principles" that have emerged from Canada's case law and best consultation practices as outlined in *Aboriginal Consultation and Accommodation – Interim Guidelines for Federal Officials to Fulfill the Legal Duty to Consult* (2008).
- The CNSC builds on the "guiding principles" to establish project-specific Aboriginal consultation processes that:
 - *Offer opportunities for CNSC staff and Aboriginal peoples to meet and discuss issues and to allow for reasonable opportunities for participation* in the hearing process before the Commission tribunal such that all relevant evidence in relation to Aboriginal Interests, including any potential impacts thereon from Aboriginal peoples, CNSC staff, the licensees, various federal, provincial, and territorial departments and agencies, and other interested parties are heard and taken into account by the Commission in relation to a project; and,



- *Are made as accessible as reasonably possible to Aboriginal peoples through organized community meetings; through open-houses, technical workshops and/or site visits; through other direct consultation with Aboriginal peoples where appropriate; through the CNSC's public hearings, which are occasionally held in host communities, with opportunities for oral or written interventions by Aboriginal peoples; through the provision of videoconferencing facilities (in some situations) for intervenors in hearings held in Ottawa; through webcast public hearings and meetings on the CNSC website; through making available on the CNSC website the hearing transcripts, information on the CNSC licensing processes, technical and safety facts and publications about the nuclear industry that the CNSC regulates; and, by ensuring that licensees assist the CNSC in consulting and engaging with Aboriginal peoples.*

Scope of Consultations

- The consultation activities for a given project may vary with the circumstances such that, for example, CNSC staff may work more closely with Aboriginal peoples prior to a Commission hearing where the potential for more serious potential adverse effects on Aboriginal Interests arising from a CNSC licensing decision appears to be a possibility. Aboriginal peoples are encouraged to bring their concerns before the Commission tribunal.

Accommodation Measures

- The CNSC recognizes that the effect of good faith consultation may result in the need to establish accommodation measures to prevent or minimize impacts of activities involving nuclear substances on Aboriginal Interests. Accommodation will likely flow through licensing requirements on licensees subject to the CNSC's authority. Any such potential accommodation must be within the statutory mandate of the CNSC, keeping in mind that the CNSC's mandate is broad in that it allows for the protection of the environment, and the health, safety and security of Canadians and there are opportunities for potential impacts to rights to be mitigated through the licensing processes.

Coordinated Approaches

- Insofar as its statutory functions allow, the CNSC supports a whole-of-government approach to Aboriginal consultation, with an aim to coordinating consultative efforts, where feasible, with other federal, provincial, and/ or territorial regulatory departments and agencies through a one-window approach, with respect to environmental assessment and licensing activities.

Assistance of Licensee to CNSC Aboriginal Consultation Activities

- While licence applicants and existing licensees of nuclear projects do not bear the Crown's legal obligation to consult Aboriginal peoples under section 35 of the *Constitution Act, 1982*, as proponents of a project that will need to be regulated by CNSC, their role to engage Aboriginal peoples is important to the efficacy of the Commission's decision-making. Licensee's consultation activities are therefore important and can inform and assist the CNSC staff's consultation activities. The outcome of all such activities, including any proposed accommodation measures by the licensee, will also form part of the evidence presented by licensees for consideration by the Commission.

Participation of Aboriginal peoples

- The CNSC encourages Aboriginal peoples to outline the nature and the scope of their Aboriginal Interests that they feel may be affected by a proposed project or activity regulated by CNSC and to bring forward outstanding issues and concerns through out the regulatory process.



Capacity

- The CNSC previously did not have the authority to provide participant funding, however while not yet approved, in the 2010 Budget the Government of Canada took steps to authorize the CNSC to establish a participant funding program to ensure the timely and meaningful engagement of the public, stakeholders and Aboriginal peoples in CNSC hearing processes. The CNSC, as an independent regulator, has highly trained scientific and technical staff available to meet with Aboriginal peoples to discuss regulatory or technical issues and to answer questions.