

July 26, 2019

From: Rose Ross (Dene Lands and Resource Management (DLRM))

To: Nicole Frigault, Environmental Assessment Specialist

Canadian Nuclear Safety Commission

By email: cpsc.ea-ee.ccsn@canada.ca

NexGen Energy Ltd. Rook I Project

CEAA Reference Number: 80171

Hello Nicole,

Please find the attached submission containing comments on the NexGen Energy Ltd. Project Description from the Athabasca Chipewyan First Nation (ACFN) Dene Lands and Resource Management (DLRM) office on behalf of the ACFN.

Best regards,

Rose Ross



Via Email

July 26, 2019

Canadian Nuclear Safety Commission (CNSC)
Uranium Mines and Mills Division
101-22nd Street East, Suite 520
Saskatoon, SK
S7K 0E1
Email: nicole.frigault@canada.ca

Saskatchewan Ministry of Environment
Environmental Assessment and Stewardship Branch
3211 Albert Street, 4th Floor
Regina, SK
S4S 5W6
<Personal Information Redacted>

NexGen Energy Ltd.
Operations Headquarters
Suite 200, 475-2nd Avenue S
Saskatoon, SK
S7K 1P4
<Personal Information Redacted>

Re: NexGen Energy Ltd. Rook 1 Project

On behalf of the Athabasca Chipewyan First Nation (“ACFN”), ACFN Dene Lands and Resource Management (“DLRM”) would like to comment on the Rook 1 Project (“the project”), based on NexGen Energy Ltd.’s project description (the “Project Description”) as requested by the Canadian Nuclear Safety Commission (“CNSC”).

ACFN acknowledges that the Rook 1 Project (“Project”) is a proposed new uranium and milling operation that is 100% owned by NexGen Energy Ltd. (“NexGen”). The Project is located adjacent to Patterson Lake in the southern Athabasca Basin in northern Saskatchewan approximately 155 km north of the town of La Loche. More importantly it is also located 80 km south of the former Cluff Lake Mine site, and is in close proximity to ACFN homesteads and traplines.

A project description is not a substitute for an environmental impact assessment (EIA). An EIA should include detailed information regarding potential impacts to the environment and on ACFN’s use of land and resources. ACFN acknowledges that the project description is a submission to CNSC for the issuance of a licence to construct and operate a new uranium mine, and is a requirement from NexGen. However, without an EIA, it’s ACFN’s view that the project description fails to provide sufficient information for ACFN and the regulators to understand, at this very preliminary stage, the types of potential impacts to the environment and to ACFN’s Treaty 8 rights.

To ACFN meaningful Consultation is an Aboriginal right in Canada guaranteed by Section 35 of the Constitution Act (1982). Under this Act, ACFN has the right to hunt, fish, trap, and gather, and when ACFN is not able to practice these rights; our Treaty Rights has been infringed.

To develop in or close proximity to areas that ACFN practices their right is a concern. As I stated earlier, ACFN member's homestead and trapline is in close proximity to the Rook 1 project. ACFN members still use the land and lake to hunt, fish, and trap. What kind of strategies does NexGen Energy Ltd. have to offer to address this concern?

A. Background on ACFN's Rights

ACFN holds Treaty and Aboriginal rights which are protected by section 35 of the **Constitution Act, 1982**. The Project is within the Tradition Lands of ACFN. Prior to the signing of the **Treaty 8** in 1899, the ancestors of what is now ACFN have lived in the vicinity of the Project and used the lands in those areas to sustain their traditional way of life.

Of ACFN's registered populations of 1287 members, approximately one third live in Fort Chipewyan, one third live in Fort McMurray and Fort McKay, with the remainder residing elsewhere. Members of ACFN continue to hold the rights guaranteed by **Treaty 8** which include hunting, trapping, gathering and fishing rights. ACFN members actively exercise their Treaty rights and carry out their traditional activities, as their ancestors have for generations, on ACFN's Traditional Lands and within the vicinity of the proposed project.

ACFN has eight reserves set aside for its use and benefit pursuant to the **Indian Act, R.S.C. 1995, c. 1-6**: Chipewyan 201, Chipewyan 201A, Chipewyan 201B, Chipewyan 201C, Chipewyan 201D, Chipewyan 201E, Chipewyan 201F, Chipewyan 201G and the N22 trapping block area of Saskatchewan.

The rights of ACFN members stand to be directly and adversely affected by the Project by the direct, indirect, and cumulative impacts on ACFN's **Treaty 8** rights to hunt, fish, trap, gather and carry out other traditional pursuits.

B. The Direct and Adverse Impacts of the Project

It was not possible to gather in-depth information in support analysis of the effects of the Project on ACFN. Instead, we undertook a preliminary review of existing information (ACFN's TUS database) contained in other projects specific interviews with ACFN members and submissions by ACFN. The results of this preliminary analysis are summarized below, please note that these results are not exhaustive presentations of ACFN land use and concerns in the region of the Project, and we are intended only to demonstrate the need for additional assessment and consultations with ACFN.

1. The Relationship between the Land and ACFN's Culture and Rights

ACFN has historically used all parts of their Treaty 8 area for a range of cultural practices that have been integral to its physical and cultural survival. Use of those lands for these purposes is extremely important to ACFN. The land sustains ACFN and is at the heart of their culture, traditions, identity, spirituality and rights.

ACFN members are very concerned with ensuring continuation of their culture and see the land

as central to their ability to do so; for example, in the following quote, R. Cardinal explains how “traditional ways” and the “land” are integral to ACFN identity and culture:

“It is important for me to continue these traditional ways. It’s been part of my family for hundreds and thousands of years. Hunting, fishing, camping, gathering food and medicines on our traditional lands, this is part of what it means to be ACFN...It’s a connection to previous generations, and it’s how we pass on and protect our traditional knowledge, culture and ways of being. I want to be able to pass it on to my children so that it can continue on.”

The land is what we use to fulfill ourselves, and I use to fulfill myself as a human. I need the connection to the land, the traditional foods, and the spiritual aspects of the land around Popular Point. Many have needs that they meet through their traditional practices in the area around Popular Point and they rely on them, if that area is developed then that will be taken away from us”

“For my generation and past generations, traditional activities are very important. For the current generation, it’s important to the ones that are interested in it. The future generations need accessible places to learn our culture.”¹ (Cardinal, 2009:9)

This deep cultural connection with the land is at the root of the Dene culture and identity. It is maintained by going out on the land, and practicing traditional activities. These practices continue to inform traditional and cultural values to ACFN members.

There is fear if lands are not protected; the young people will not be taught these ways, and the ACFN’s Dene culture and language could be lost forever.

“The people today have to teach the young people about the traditional way of life and their culture... We often hear this from people, once our age group (Elders over 70 years of age) is gone, there’s a chance that our culture, our language could be gone forever. That’s a sad thing to think about let alone to see it happen...”

That’s why when we talk about the land (we want) to protect and preserve it in order to help the young people learn about our way of life and to try to maintain the way of life in the future. We want to keep that culture alive...That will help reserve the way of life on the land.”²

The land, and access to it for cultural activities, is essential for teaching cultural knowledge and language, which are necessary to sustain in order to “preserve and protect” that livelihood.

ACFN members actively use lands within the vicinity of the project for a variety of purposes. While carrying out their traditional harvesting activities, many older ACFN members also pass down their knowledge and skills to younger ACFN members. The importing of traditional harvesting knowledge and skills is essential to the survival of the ACFN’s culture and its distinctiveness as a people. It is clear that as development increases, it is becoming more difficult for ACFN to hunt, fish, trap and gather.

¹Cardinal R. 2009, in the Court of Queen’s Bench of Alberta Judicial District of Edmonton between Athabasca Chipewyan First Nations and Minister of Energy, Canadian Coastal Resources Ltd, Standard Land Company Inc., and Shell Canada Ltd, Affidavit # of R. Cardinal sworn January 30, 2009 Action No. 0803 17419, Edmonton Registry

² Focus Group PA-1, 2009 ACFN Land Use Plan-Preservation Areas Study Focus Group PA-1, Fort Chipewyan, Alberta October 15 and October 19, 2009. Transcript is in the possession of ACFN DLRM, Fort McMurray, Alberta.

The importance of land to First Nations is highlighted in the recent decision of Justice Smith of the Ontario Superior Court of Justice in **Platinex v. Kitchenuma et al.** (2006), 272 D.L.R. (4th) 727 at par. 80: It is crucial the nature of the potential loss (of Land) from an Aboriginal perspective. From that perspective, the relationship that aboriginal peoples have with the land cannot be understated. The land is the very essence of their being. It is their very heart and soul...Aboriginal identity spirituality, laws, traditions, culture and rights are connected to and arise from this relationship to the land. This is a perspective that is foreign to and often difficult to understand from a non-Aboriginal viewpoint.

C. Need for Further Assessment to Support Consultation

Any taking up of lands for development requires a proper assessment of the direct, indirect and cumulative impacts of development on Treaty and Aboriginal rights. ACFN's Traditional Lands are increasingly taken up by bitumen mines and associated plant facilities, in-situ wells, pipelines and facilities, gas wells, seismic lines, uranium mines, oil exploration wells and associated seasonal access and road ways. This activity is unrelenting: every year there are hundreds (or more) of new applications for oil and gas, forestry and other development with ACFN's Traditional Lands.

An assessment of the effects of this project on ACFN's rights and traditional uses must include an analysis of what lands have already been taken up by development and what lands are required to sustain ACFN's Section 35 rights.

D. ACFN's Concern Not Addressed by Other Means

Due to the gaps and deficiencies in information of the project description, and the lack of capacity to dedicate the time and personnel to an in-depth information gathering and analysis exercise, it is difficult for us to comment on the full impacts of the Project on ACFN's rights and traditional uses. If provided additional time, and capacity, ACFN may be able to identify even more direct and adverse impacts of the Project on their rights. These gaps and deficiencies in information ought to be of concern to the regulators involved with the Project.

It is also important to note; the materials NexGen has submitted as part the Project does not contain information about ACFN's Treaty and Aboriginal rights. In short, a number of the direct and adverse effects that the Project may have on ACFN's **Treaty 8** rights remain unaddressed. It is submitted that NexGen and the regulators simply lack sufficient information at this point to move forward with the Project.

Moreover, although numerous cases have made it abundantly clear that both Canada and Saskatchewan have a constitutional duty to consult with First Nations where projects (including environmental processes related to thereto) have the potential to adversely affect their rights, Saskatchewan has not yet engaged with ACFN in consultation with respect to the project and we look forward to this occurring.

ACFN's **Treaty 8** and Aboriginal rights stand to be directly and adversely affected by the Project as well as by the development that the Project will induce. Given that this constitutionally-protected right is at risk and given that the ability of ACFN members to exercise their rights within their Traditional Lands is steadily diminishing. The Project is within the Traditional Lands of ACFN. Our concerns regarding the health of the lakes, rivers and the landscapes continue to

go unaddressed and cultural impacts continue to go unmitigated. ACFN submits that the Project should not be approved at this time.

It is further submitted that the impacts of the Project on ACFN's rights and the required mitigation measures (if the Project is approved) must be considered during the initial review process for the Project and not following on approval.

E. Technical Review and Land Use Study

The ACFN acknowledges NexGen's good faith in trying to protect the environment and ensuring that their operations and development are conducted in a safe, environmental and sustainable manner. How does NexGen Energy intent to ensure that their project will not have cumulative effects on the environment? How does NexGen Energy Ltd. intend to safely operate and develop their project and not affect the water quality, fish habitat, wildlife, and environment that our ACFN members rely on? In order to more fully consider the impacts of the Project, the DLRM maintains that it is necessary to complete a Technical Review as well as a Traditional Land Use Study.

F. Closing Remarks

ACFN DLRM has a policy that was put in place by the ACFN Board of Directors. The policy states that there are costs associated with consultation and engagement meetings. Proponents are given a preapproval form to review and approve prior to meetings. We also require funding from companies to review project applications that they submit to the regulators. In these reviews, we identify environmental issues and concerns that require mitigation measures, and accommodation.

Thank you for providing us this opportunity to review, comment and express our concerns regarding the Rook 1 Project. We request that the CNCS not grant approval until such time as the additional concerns expressed herein are addressed.

I look forward to your response.

Best Regards,

<Personal Information Redacted> |

Rose Ross
Regulatory Officer

Cc: Lisa Tsessaze, ACFN DLRM Director
Maggie Farrington, ACFN CEO
Richard Snider, CNCS