

ATTACHMENT August 17, 2022

**Federal Authority Advice Record: Designation Request under IAA**

**Response due by September 7, 2022**

Patterson Lake South Mine Project

Department/Agency	Canadian Nuclear Safety Commission
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1. Has your department or agency considered whether it has an interest in the Project; exercised a power or performed a duty or function under any Act of Parliament in relation to the Project; or taken any course of action (including provision of financial assistance) that would allow the Project to proceed in whole or in part?

Specify as appropriate.

To date and in relation to the proposed Patterson Lake South project (the Project), the only exercise of power the CNSC performed under its governing legislation, namely the Act of Parliament entitled the *Nuclear Safety and Control Act*, S.C. 1997, c. 9 (NSCA), is to provide the Province of Saskatchewan (Province) with information about the CNSC's legislation, regulations and standards. As authorized under paragraph 21(1)(a) of the NSCA, the CNSC has a cooperation and coordination memorandum of understanding with the Province from 1993. The CNSC has no licence application from Fission Uranium Corp.'s (the Proponent or Fission) in relation to the Project.

According to Fission's Terms of Reference document, the Project as currently proposed does not meet the definitions of the relevant uranium mine and mill sections of the *Physical Activities Regulations*, SOR/2019-285 (section 20 to 23) under the *Impact Assessment Act*, S.C. 2019, c.29, s.1. Fission's Terms of Reference for the Project states an approximate production capacity of 1000 tons per day (t/day) and would be below the 2500t/day threshold set out in the most applicable section of the *Physical Activities Regulations*, section 20.

The Project is subject to an environmental assessment (EA) under Saskatchewan's *The Environmental Assessment Act*, SS 1979-80, c E-10.1. The Province of Saskatchewan (the Province) requested CNSC act as a federal expert for nuclear matters in relation to assessing the Project. CNSC staff has had direct communication with the Proponent prior to the commencement of the provincial EA about the CNSC licensing process and requirements. As the EA has moved through the Saskatchewan EA process, the CNSC has communicated with the Proponent through the Province and has provided the Province comments on the Proponent's draft Terms of Reference and Project Description documents in January 2022.

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2. Is it probable that your department or agency may be required to exercise a power or perform a duty or function related to the Project to enable it to proceed?

If yes, specify that power, duty or function and its legislative source.

Yes, the Project would require a licence issued by the CNSC under powers conferred by the *Nuclear Safety and Control Act* (NSCA) for the Project to proceed. Under the NSCA, subsections 24(1) and 24(2) identify that the Commission has the power to authorize a licensee to carry out activities specified in paragraphs 26(a) to (f) of the NSCA.

24(1) The Commission may establish classes of licences authorizing the licensee to carry out on any activity described in any of paragraphs 26(a) to (f) that is specified in the licence for the period that is specified in the licence.

Paragraph 26(b) states:

- 26 Subject to the regulations, no person shall, except in accordance with a licence;  
[...]
- (b) mine, produce, refine, convert, enrich, process, reprocess, package, transport, manage, store or dispose of a nuclear substance;

Furthermore, the Project will be subject to the *Uranium Mine and Mills Regulations*, SOR/2000-026 under the NSCA, which outlines licence applications, timelines, obligations of licensees and records to be kept and made available.

If an EA (provincial or federal) must be conducted with respect to a proposed project, the CNSC cannot issue a related licence until the EA decision has been issued that allows the project to continue. The CNSC may begin the licence application review concurrent to the EA or following the EA process. To date, the CNSC has not received a licence application from the Proponent for the Project in question. If the CNSC were to receive a licence application from Fission, environmental components would be assessed under the existing regulatory mechanisms, referred to as Environmental Protection Reviews, and the powers granted to the CNSC by sub-paragraph 9(a)(i) of the NSCA, namely:

- (i) to prevent unreasonable risk, to the environment and to the health and safety of persons, associated with that development, production, possession or use [...]

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3. If your department or agency will exercise a power or perform a duty or function under any Act of Parliament in relation to the Project, will it involve public and Indigenous consultation?

Specify as appropriate.

Yes, the CNSC's conduct would involve public and Indigenous consultation.

The CNSC, for all its purposes, is an agent of Her Majesty the Queen in Right of Canada, which means the CNSC can bind the Crown. As an agent of the Crown, the CNSC takes the view that its exercise of NSCA authority must uphold the honour of the Crown as well as discharge its obligations with respect to the constitutional duty to consult and accommodate, where appropriate, in respect of CNSC decision-making that has the potential to affect established or asserted Indigenous or treaty rights.

Should Fission apply for a licence from the CNSC for the Project, the CNSC will initiate its consultation and engagement activities, including the development of Indigenous community-specific consultation plans and arrangements, the completion of community-specific rights-impact assessments, meetings, gathering and consideration of Indigenous Knowledge, workshops and funding support through the CNSC's Participant Funding Program (PFP). The CNSC has a well-established Indigenous consultation and engagement program that is in line with best practices across the Government of Canada. At this time, as Fission has not submitted a formal licence application, the CNSC is not

actively consulting potentially impacted Indigenous Nations and communities with regards to the Project. However, CNSC staff are working to build relationships and share information about what its role would be in relation to consultation and regulatory and technical reviews should Fission apply for a CNSC licence for the Project with potentially impacted Indigenous Nations and communities. Given there is an ongoing CEAA 2012 EA for the NexGen Rook 1 project proposed on Patterson Lake—the same lake on which Fission’s Project is proposed, CNSC staff have received questions regarding the Fission project while consulting on the Rook 1 project and will respond accordingly.

In addition, the CNSC interacts with members of the public, non-governmental organizations, and other stakeholders by maintaining transparency and engagement throughout the regulatory review process. The CNSC holds public Commission hearings which gives an opportunity for the public and Indigenous Nations and communities to communicate their interests and concerns about any project or licensing application before the CNSC directly to the Commission. This public consultation process occurs through both written and oral interventions as part of the Commission’s decision-making process. The CNSC has also recently started to make use of an [e-consultation platform](#) for receiving comments on such items as discussion papers, reports, and regulatory documents. Informal opportunities, such as open house information sessions, virtual webinars, and regular and ad hoc meetings (typically with Indigenous Nations) occur throughout the review of the project.

The CNSC outlines its processes through regulatory documents available [here](#), two of relevance for engagement and consultation include:

- Indigenous consultation is outlined in [REGDOC-3.2.2 Indigenous Engagement](#).
- Public information and disclosure programs in [REGDOC-3.2.1 Public Information and Disclosure](#).

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4. Is your department or agency in possession of specialist or expert information or knowledge that may be relevant to any potential adverse effects within federal jurisdiction caused by the Project or adverse direct or incidental effects stemming from the Project?

Specify as appropriate.

Yes, the CNSC is the sole nuclear regulator in Canada and exercises powers granted to it under the NSCA, as mentioned in response to question 3. CNSC staff have expertise in areas related to upholding the mandate granted to the Commission under the NSCA, for example in assessing radiological and hazardous risks to the environment and human health stemming from uranium mines and milling projects. CNSC staff expertise range from a multitude of topics and use 14 different [Safety and Control Areas](#) to evaluate a proponent or licensee with respect to management systems, human performance management, operating performance, safety analysis, physical design, fitness for service, radiation protection, conventional health and safety, environmental protection, emergency management and fire protection, waste management, security, safeguards and non-proliferation, and packaging and transport, as applicable.

The CNSC also relies on the expertise of other federal departments and agencies to fulfil its mandate. For example, the CNSC has signed memoranda of understanding with the Department of Fisheries and Oceans, Environment and Climate Change Canada, and the Impact Assessment Agency.

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5. Has your department or agency had previous contact or involvement with the proponent or other parties in relation to the Project?

Provide an overview of the information or advice exchanged.

Yes, CNSC staff have had discussions with the Proponent prior to commencement of the provincial EA regarding the CNSC licensing process. A proponent may either 1) put forward a licence application at the beginning of or during the EA so that both processes can move in parallel, or 2) submit a licence application sequentially, once the EA process has completed. Following discussions with CNSC staff, the Proponent chose to delay the submission of a licence application to the CNSC to a later date. A CNSC licence will be required for the Proponent to proceed with the Project.

The Province requested that the CNSC review Fission's draft Terms of Reference and Project Description documents to ensure the Proponent captures all necessary information in their environmental impact statement relating to the CNSC's own mandate. CNSC staff submitted comments reflecting its licensing process in relation to environmental protection, Indigenous consultation and engagement, and provided guidance in relation to future CNSC licensing requirements. CNSC staff comments on the draft Terms of Reference and Project Description can be provided to the Agency upon request.

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6. From the perspective of the mandate and area(s) of expertise of your department or agency, does the Project have the potential to cause adverse effects within federal jurisdiction or adverse direct or incidental effects as described in section 2 of IAA? Could any of those effects be managed through legislative or regulatory mechanisms administered by your department or agency? If a licence, permit, authorization or approval may be issued, could it include conditions in relation to those effects?

Specify as appropriate.

Yes, the Fission's Project is a new uranium mine and mill, for which under the Commission is required, paragraph 9(a) of the NSCA:

9 [...]

(a) to regulate the development, production and use of nuclear energy and the production, possession and use of nuclear substances, prescribed equipment and prescribed information in order to  
[...]

On an undeveloped (or greenfield) site, there is a potential to cause adverse effects. However, the Project is subject to a provincial EA to outline potential effects and, in the future if Fission submits a license application for the Project to proceed, it will be subject to CNSC licensing and managed through the regulatory mechanisms of the CNSC. CNSC licences can, and often do, include conditions for the licensee in relation to any matter deemed necessary under the CNSC mandate. The CNSC could not include licence conditions relating to social and economic matters as they are directly outside of the CNSC mandate.

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7. Does your department or agency have a program or additional authority that may be relevant and could be considered as a potential solution to concerns expressed about the Project? In particular, the following issues have been raised by the requestor. The Project:

- is located in an environmentally sensitive area including within the territory of the Boreal Shield Woodland Caribou
- is anticipated to adversely impact areas within federal jurisdiction, including Indigenous peoples and lands, species at risk, fish and fish habitats
- is anticipated to significantly and adversely impact the ability for Métis people to exercise their rights and may compromise the integrity of their Land Claim
- presents a risk to the human and socio-economic health of Métis and other Indigenous peoples, both in and around the Project location, and through the transportation corridor which passes through a number of majority-Métis communities
- will contribute to the cumulative impacts of other developments in an around Patterson Lake, an area of cultural significance to Metis Nation of Saskatchewan
- will create adverse impacts that will not be adequately or fully addressed through the provincial environmental assessment process

If yes, please specify the program or authority.

Yes, specifically the CNSC has authority relevant to impacts to, as set out in the above-noted list under question 7, Indigenous peoples and lands, species at risk, fish and fish habitats, Métis rights, risks to human health of Métis and other Indigenous peoples. The CNSC regulatory framework looks directly at all areas of environmental protection and radiation protection, which links to impacts to on human health, Indigenous lands (including Métis lands), species at risk, and fish and fish habitats.

With respect to cumulative impacts, the Fission project is included as a “reasonably foreseeable development” for the consideration of the cumulative effects in the NexGen Rook 1 project Environmental Impact Statement (EIS), submitted in accordance with CEAA 2012. The inclusion of Fission in the NexGen EIS is based on initial available information. Furthermore, CNSC is a funding partner, with the province of Saskatchewan and industry, for the Eastern Athabasca Monitoring Program (EARMP), which is an environmental monitoring program designed to gather data on potential cumulative impacts downstream of uranium mine and mill operations in northern Saskatchewan. The EARMP is currently focused on the eastern side of the region, but the CNSC is currently exploring the expansion of the program to cover the western Athabasca basin, where the Fission Project is located, in the future as the EARMP is coming to the end of a 5-year funding agreement.

CNSC requires licensees to have environmental protection programs that consist of control and mitigation measures and monitoring for releases to the environment, which are informed by an iterative 5-year environmental risk assessment cycle. Environmental protection requirements are outlined in REGDOC-2.9.1 Environmental Principles, Assessments and Protection Measures v.1.2.

The CNSC environmental protection requirements will cover a number of topics listed in the bulleted list under question 7, such as impacts to Indigenous peoples and lands, species at risk, fish and fish habitats, and risk to human health of Métis and other Indigenous peoples, as they are topics that fall within the CNSC mandate, laid out under subparagraph 9(a)(i) of the NSCA:

- (i) to prevent unreasonable risk, to the environment and to the health and safety of persons, associated with that development, production, possession or use
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8. Does your department or agency have information about the interests of Indigenous groups in the vicinity of the Project; the exercise of their rights protected by section 35 of the Constitution Act, 1982; and/or any consultation and accommodation undertaken, underway, or anticipated to address adverse impacts to the section 35 rights of the Indigenous groups?

If yes, please specify.

Yes, CNSC has a number of licensees and ongoing projects throughout Northern Saskatchewan and the western Athabasca Basin (the location of Patterson Lake and the Project in question). CNSC staff engage with potentially impacted Indigenous Nations and communities in the area on a regular basis. CNSC staff is actively consulting all identified Nations and communities in relation to NexGen's Rook 1 project, which is located on the same lake as the Fission Project; and will continue to do so throughout the Rook 1 project's lifecycle. A number of the Indigenous Nations and communities in this region have shared Indigenous Knowledge, and land use data in relation to the Rook 1 project that may also cover the Fission Project location.

To date, CNSC staff has not conducted any specific consultation or engagement activities in relation to Fission's Project because the Proponent has not submitted a CNSC licence application. However, CNSC staff are working to build relationships with potentially impacted Nations and communities and share information about what the CNSC's role would be in relation to consultation and regulatory and technical reviews should Fission apply for a CNSC licence for the Project.

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9. If your department has guidance material that would be helpful to the proponent or the Agency, please include these as attachments or hyperlinks in your response.

Additional materials have been hyperlinked throughout the FAAR form.

Doug Wylie

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Name of departmental / agency responder

Environmental Assessment Officer

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Title of responder

September 7, 2022

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Date