



# Record of Decision

DEC 20-H102

In the Matter of

Project  
Proponent

Global First Power

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Subject

Decision on the scope of an environmental  
assessment for the proposed Micro Modular  
Reactor Project at the Chalk River Laboratories

Date of  
Decision

July 16, 2020

**RECORD OF DECISION – DEC 20-H102**

Applicant: Global First Power

Address/Location: 130 Albert Street, Suite 504, Ottawa, Ontario, K1P 5G4

Purpose: Decision on the scope of an environmental assessment for the proposed Micro Modular Reactor Project at the Chalk River Laboratories

Project description received: July 8, 2019

Date of decision: July 16, 2020

Panel of Commission: R. Velshi, President

**Decision on the scoping of an environmental assessment under the *Canadian Environmental Assessment Act, 2012***

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## 1.0 INTRODUCTION

1. In March 2019, Global First Power (GFP) submitted an application for a licence to prepare a site for a Class I nuclear facility and a project description for its proposed Micro Modular Reactor (MMR) Project<sup>1</sup> to the Canadian Nuclear Safety Commission<sup>2</sup> (CNSC). In its project description, GFP has proposed a project for a single MMR at the Chalk River Laboratories in Renfrew County, Ontario. The proposed MMR Project consists of two major components: a nuclear plant, containing a high temperature gas-cooled reactor, and an adjacent plant required to convert heat energy to electrical energy.
2. Pursuant to section 15 of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012),<sup>3</sup> which was in effect at the time the project description was submitted, the CNSC, as the responsible authority (RA) for the proposed project, was required to consider the application of CEAA 2012 in respect of the project.
3. Following a CNSC request for revisions to the project description, GFP submitted a revised project description in July 2019. CNSC staff confirmed that the revised project description was complete and in accordance with the *Prescribed Information for the Description of a Designated Project Regulations*.<sup>4</sup> The MMR Project meets the definition of a “designated project” that is included in the “Physical Activities” list, as defined in section 31 of the *Regulations Designating Physical Activities*<sup>5</sup> made under CEAA 2012, requiring that an environmental assessment (EA) be carried out for the project. CNSC staff posted a Notice of Commencement (NOC) of an EA on the Canadian Impact Assessment Registry<sup>6</sup> on July 15, 2019,<sup>7</sup> as per section 17 of CEAA 2012, thus commencing the EA.
4. The *Impact Assessment Act* (IAA)<sup>8</sup> came into force on August 28, 2019. The transitional provision, section 182 of the IAA, stipulates that any EA of a designated project commenced under CEAA 2012 in respect of which no decision statement had been issued before the IAA came into force, is to be continued under the CEAA 2012. Accordingly, this EA shall continue under CEAA 2012. On August 29, 2019, the CNSC issued a letter to advise GFP of this fact, and the letter was posted on the Canadian Impact Assessment Registry.

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<sup>1</sup> Global First Power, Project Description for the Micro Modular Reactor Project at Chalk River, <https://iaac-aeic.gc.ca/050/documents/p80182/130911E.pdf>, accessed June 16, 2020.

<sup>2</sup> The Canadian Nuclear Safety Commission is referred to as the “CNSC” when referring to the organization and its staff in general, and as the “Commission” when referring to the tribunal component.

<sup>3</sup> S.C. 2012, c. 19, s. 52

<sup>4</sup> SOR/2012-148

<sup>5</sup> SOR/2012-147

<sup>6</sup> At the time the Notice of Commencement was posted, CEAA 2012 was in force and the Canadian Impact Assessment Registry was known as the Canadian Environmental Assessment Registry.

<sup>7</sup> Notice of Commencement of an Environmental Assessment – Micro Modular Reactor at Chalk River, <https://iaac-aeic.gc.ca/050/evaluations/document/132177>, accessed June 16, 2020.

<sup>8</sup> S.C. 2019, c. 28, s. 1

5. Prior to the EA being carried out, the Commission must determine the scope of the factors to be considered in the EA, under the applicable provisions of CEAA 2012.

Changes to deadlines and requests for extensions for the submission of requests to intervene

6. The Commission received three requests to extend the deadline for the submission of requests to intervene on:
  - April 8, 2020 from the Canadian Environmental Law Association and Dr. M. V. Ramana (collectively referred to as CELA)
  - April 23, 2020 from Dr. C. Vakil
  - April 30, 2020 from the Algonquins of Ontario (AOO)
7. The Commission denied these extensions. In determinations issued on April 27, 2020<sup>9</sup> and May 12, 2020,<sup>10</sup> the Commission provided reasons for its decisions. The Commission's reasons included fairness considerations in respect of all participants in this process, noting that, per the revised notice of hearing in writing that was published on March 24, 2020,<sup>11</sup> interested persons had already been granted an additional 30 days to submit their requests to intervene to reflect COVID-19 challenges. CNSC staff was also granted an extension to April 30, 2020 to submit its submission. Finally, the Commission noted that scoping is an early one of several phases of the MMR Project, focused solely on the scope of factors to be considered in the EA and that there will be several future opportunities to participate and intervene in relation to the MMR Project. Such opportunities shall include, but shall not be limited to: a comment period on the draft EIS; a comment period on CNSC staff's draft EA Report; and intervention opportunities in public hearings for Commission's consideration of the project EA and project licensing. Therefore, per the Commission's determinations, the deadline for the submission of requests to intervene remained June 1, 2020.
8. The Commission recognizes that Citizens Against Radioactive Neighborhoods (CARN) and Port Hope Community Health Concerns Committee submitted an intervention that was initially not posted on the CNSC website due to internal errors. The submission was given due consideration despite this internal error respecting its posting.

Panel

9. Pursuant to section 22 of the NSCA, the President established herself to preside as a Panel of the Commission to consider this matter. The Commission considered written submissions from CNSC staff (CMD 20-H102 and CMD 20-H102.A) and from 40 intervenors (see Appendix A for a list of interventions).

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<sup>9</sup> Determination on the request to extend the timeline for submissions by Canadian Environmental Law Association, April 27, 2020.

<sup>10</sup> Determination on the request to extend the timeline for submissions by the Algonquins of Ontario, May 12, 2020.

<sup>11</sup> *Revised Notice of an Opportunity to Submit a Written Intervention on the Scope of an Environmental Assessment*, Revision 1, March 24, 2020.

## 2.0 DECISION

10. Based on its consideration of the matter, as described in more detail in the following sections of this *Record of Decision*, the Commission,

pursuant to section 19 of the *Canadian Environmental Assessment Act, 2012*, determines the scope of the factors for the environmental assessment of the Micro Modular Reactor Project proposed by Global First Power to include the factors mandated in paragraphs 19(1)(a) to (h) of the *Canadian Environmental Assessment Act, 2012*, with no additional factors.

11. The Commission accepts CNSC staff's submission that, in accordance with subsection 19(3) of CEAA 2012, Indigenous traditional knowledge and community knowledge shall inform the EA for the MMR Project.
12. The Commission understands that GFP will prepare an environmental impact statement (EIS) for the proposed MMR Project in accordance with the *Generic Guidelines for the Preparation of an Environmental Impact Statement pursuant to the Canadian Environmental Assessment Act, 2012*<sup>12</sup> (EIS Guidelines). The Commission understands that the draft EIS prepared by GFP will be made available on the public registry for public comment.
13. The Commission is satisfied that the EIS Guidelines, REGDOC-1.1.1, *Site Evaluation and Site Preparations for New Reactor Facilities*,<sup>13</sup> and REGDOC-2.9.1, *Environmental Protection: Environmental Principles, Assessments and Protection Measures*<sup>14</sup> satisfactorily address how a proponent's EIS shall consider and address the factors to be considered in the scope of an EA, as contemplated by CEAA 2012 in paragraphs 19(1)(a) to (h).
14. The Commission notes that, of the 40 interventions received, 19 were in general support of the MMR project; of the other 21 interventions, several expressed general opposition to the MMR Project but did not comment specifically on the EA scoping factors. It is of note that topics such as socio-economic effects, market potential, and economic feasibility are not within the scope of the NSCA.
15. In considering the project description submitted by GFP, the Commission noted that there was a lack of clarity on the purpose of the MMR Project. The Commission anticipates that future submissions from GFP will include a more detailed description of the purpose

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<sup>12</sup> *Generic Guidelines for the Preparation of an Environmental Impact Statement pursuant to the Canadian Environmental Assessment Act, 2012*, CNSC, published 2016.

<sup>13</sup> CNSC Regulatory Document, REGDOC-1.1.1, *Site Evaluation and Site Preparations for New Reactor Facilities*, published July 2018.

<sup>14</sup> CNSC Regulatory Document, REGDOC-2.9.1, *Environmental Protection: Environmental Principles, Assessments and Protection Measures*, published April 2017.

of the MMR Project. Specifically, the Commission expects clarity in regard to whether the MMR Project is intended solely for demonstration purposes and to show that the technology functions in the ways intended, or whether the MMR Project is intended for other purposes, such as demonstrating the ability to operate MMRs in remote communities.

16. The Commission accepts the factors as presented by CNSC staff for this project only at the Chalk River Laboratories site. Should GFP wish to apply for a licence to prepare a different site for a Class I nuclear facility, this would entail a new licence application and project description. The potential impacts of that different project would be evaluated according to the applicable law at that time.
17. The Commission notes that many intervenors expressed concerns about future participation opportunities in the EA and licensing process for the proposed MMR Project. The Commission directs CNSC staff to provide future opportunities for Indigenous peoples' and the public's participation in the project as recommended in CMD 20-H102. Such opportunities for participation shall include, but shall not be limited to: a comment period on the draft EIS; a comment period on CNSC staff's draft EA Report; and intervention opportunities in public hearings for Commission's consideration of the project EA and licensing. Participant funding opportunities shall be offered as recommended by CNSC staff as stated in CMD 20-H102.
18. The Commission directs CNSC staff to report to the Commission on any issues arising during the conduct of the EA that could warrant Commission reconsideration of the above scoping decision.
19. The Commission notes the assertion made by some intervenors that the CNSC was advocating that SMRs be excluded from the IAA in a meeting between CNSC staff and a CNSC licence holder. After reviewing the article referenced for this point,<sup>15</sup> the Commission wishes to simply note that CNSC staff's recommendation was not that all SMRs be excluded from the IAA but rather, that there be a threshold established for smaller reactors, based on their risk levels, given the CNSC's strong oversight under the NSCA.

### **3.0 ISSUES AND COMMISSION FINDINGS**

20. In consideration of this matter, the Commission examined the completeness and adequacy of the information submitted by CNSC as presented in CMD 20-H102. The Commission notes that CNSC staff included in its submission a revised description of the MMR Project that was submitted by GFP in July 2019, a link to the disposition table of the questions and comments resulting from the Indigenous and public consultation on the project description, and the CEEA 2012 process map.

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<sup>15</sup> Blaise, K. and Stensil, S-P. (2019) "Small Modular Reactors in Canada: Eroding Public Oversight and Canada's Transition to Sustainable Development," Manuscript, In: Black-Branch J., Fleck D. (eds) Nuclear Non-Proliferation in International Law, Volume V.

### **3.1 Application of the *Canadian Environmental Assessment Act, 2012***

21. GFP submitted its revised description for the MMR Project to the CNSC in July 2019, at which time CEAA 2012 and its regulations provided the requirements for EA for nuclear projects. The IAA came into force on August 28, 2019. As this project had commenced under CEAA 2012 following the submission of the project description in March 2019, in accordance with the transitional provision provided for by section 182 of the IAA, this project is to continue under CEAA 2012.
22. The Commission considered the EIS Guidelines and the sufficiency with which these provide guidance to a project proponent to carry out an EIS. The Commission notes that the CNSC's EIS Guidelines apply to all "designated projects" under CEAA 2012 and, therefore, apply to this project. The Commission is satisfied that the EIS Guidelines provide proponents with adequate information that will be required for the preparation of their technical studies related to a proposed project and how the factors contemplated by subsection 19(1) of CEAA 2012 shall be considered by a proponent.
23. CNSC staff reported that, pursuant to section 20 of CEAA 2012, the relevant federal authorities were informed about the proposed project to confirm their future participation in the EA process. CNSC staff submitted that the following six federal authorities have confirmed their participation and would provide the expertise relevant to the proposed project:
  - Environment and Climate Change Canada
  - Health Canada
  - Natural Resources Canada
  - Parks Canada
  - Transport Canada
  - Fisheries and Oceans Canada
24. The Commission notes the concern raised by several intervenors that, had GFP filed its project description after the IAA came into force, there would be additional factors that GFP would be required to consider, in addition to those contemplated by CEAA 2012. In its written submission, CNSC staff opined that, based on its review of the additional factors listed in subsection 22(1) of the IAA, these are either adequately addressed in the CNSC's regulatory framework or are not within CNSC's mandate, such as socio-economic factors. Further on that topic, CNSC staff submitted that, additional factors listed in the IAA, such as the use of community knowledge and comments from the public, are also adequately addressed within CNSC's regulatory framework. The Commission applies the governing law, and the IAA is clear that it is the factors in CEAA 2012 which apply to this project. On its consideration of the submissions, the Commission is well satisfied that the factors applicable to this project are adequate for the assessment of potential environmental effects of this project.



## 3.2 Consultations on the Scope of the EA

### 3.2.1 Indigenous Consultation and Engagement

25. The Commission recognizes that the common law duty to consult with Indigenous peoples applies when the Crown contemplates actions that may adversely affect potential or established Indigenous and/or treaty rights, and that cooperation with Canada's Indigenous peoples with respect to EA is one of the purposes of the CEAA 2012. The CNSC ensures that all of its EA and licensing decisions uphold the honour of the Crown and consider Indigenous peoples' potential or established Indigenous and/or treaty rights pursuant to section 35 of the *Constitution Act, 1982*.<sup>16</sup>
26. CNSC staff submitted that it had identified Indigenous groups and organizations with potential interest in the MMR Project, had provided each identified group / organization with the Notice of Continuation and had solicited comments on GFP's project description as part of the 60-day comment period. CNSC staff reported that the identified Indigenous groups and organizations with potential interest in the project include:
- Algonquins of Ontario: Antoine, Bonnechere, Greater Golden Lake, Kijicho Manito Madaouskarini (Bancroft), Mattawa/North Bay, Ottawa, Shabot Obaadjiwan (Sharbot Lake), Snimikobi (Ardoch), Whitney and Area
  - Algonquins of Pikwakanagan First Nation
  - Algonquin Anishinabeg Nation Tribal Council
  - Conseil de la Première Nation Abitibiwinni
  - Communauté anicinape de Kitcisakik
  - Nation Anishnabe du Lac Simon
  - Long Point First Nation
  - Timiskaming First Nation
  - Kitigan Zibi Anishinabeg First Nation
  - Kebaowek First Nation
  - Alderville First Nation
  - Mississaugas of Scugog Island First Nation
  - Hiawatha First Nation
  - Curve Lake First Nation
  - Chippewas of Rama First Nation
  - Chippewas of Georgina Island First Nation
  - Beausoleil First Nation
  - Anishinabek Nation
  - Algonquin Nation Secretariat
  - Chiefs of Ontario
  - Métis Nation of Ontario

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<sup>16</sup> *Constitution Act, 1982*, Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.)

27. CNSC staff submitted that CNSC staff and GFP had offered to meet with Indigenous groups and organizations that had expressed an interest in the proposed project. In its written submission, CNSC staff provided details of meetings that were carried out from April 2019 to January 2020, with the intention of introducing and discussing the MMR Project, discussing the EA and licensing processes, and building relationships with Indigenous groups and organizations. CNSC staff further submitted that, throughout the project, it would continue to build relationships with Indigenous groups and communities through meetings and the provision of timely information and project updates, to ensure that the Crown's responsibility and reconciliation goals are fulfilled.
28. The Commission considered the Indigenous engagement activities that had been conducted to date by GFP. CNSC staff submitted that it had reviewed the preliminary Indigenous engagement activities carried out by GFP and that, in accordance with REGDOC-3.2.2, *Indigenous Engagement*,<sup>17</sup> GFP had submitted its preliminary Indigenous Engagement Report. CNSC staff further submitted this report outlined the Indigenous groups with which GFP planned to engage during the proposed project, GFP's planned Indigenous engagement activities and the concerns that had been raised to date by the identified Indigenous groups and organizations. CNSC staff submitted that its review of GFP's preliminary engagement activities and the preliminary Indigenous Engagement Report showed that these were satisfactory and in accordance with REGDOC-3.2.2.
29. CNSC staff's CMD submitted that GFP had contacted and met with the identified Indigenous groups and organizations in order to introduce the MMR Project and to discuss any potential impacts on Indigenous and/or treaty rights, land use or other concerns about the project. During those meetings, GFP also provided clarification regarding the project and solicited early feedback on the project engineering and design.
30. CNSC staff reported that, throughout the EA process for the MMR Project, it would verify GFP's compliance with REGDOC-3.2.2 and CEEA 2012, including the collecting of relevant Indigenous knowledge and traditional land use information from identified Indigenous groups and organizations to inform the EIS, where appropriate.
31. The Commission acknowledges the comments submitted by Algonquins of Pikwakanagan First Nation, the Algonquins of Ontario and Kebaowek First Nation in relation to how Indigenous knowledge will be utilized, the development of a formal consultation plan, and the need for additional studies. CNSC staff submitted that its consultation activities will include participant funding, and the development of consultation and rights impact assessment approaches specific to each of the First Nations. CNSC staff added that Indigenous knowledge and traditional land use information will be gathered and considered.

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<sup>17</sup> CNSC Regulatory Document, REGDOC-3.2.2, *Indigenous Engagement*, version 1.1, published August 2019.

32. The Commission recognizes the concerns raised by Kebaowek First Nation related to not having been consulted adequately on the assessment of the scope of factors to be considered for the MMR Project. The Commission directs CNSC staff to engage in meaningful discussion with Kebaowek First Nation to address its concerns. Although the Commission is satisfied that there has been adequate engagement for this scoping decision, the Commission is also of the view that there is much engagement and consultation to be done with respect to the conduct of the EA. CNSC staff should address its efforts in this regard following this decision.
33. The Commission noted the concerns submitted by Indigenous groups and organizations in regard to the consultation process and the restrictions to this process that have occurred as a result of the COVID-19 pandemic. CNSC staff submitted that it understands the importance of in-person meeting with Indigenous people during consultation activities. CNSC staff acknowledged that, due to the COVID-19 pandemic, there has been a necessary limitation of social interactions, including in-person Indigenous engagement and consultation activities. CNSC staff submitted that it would provide updates on the proposed project and EA via e-mail throughout the EA and licensing processes, with open houses and technical sessions conducted either virtually and/or by telephone until such time that in-person activities can safely resume. CNSC staff indicated that it would continue to ensure that it can carry out consultation activities that meet the needs of all Indigenous groups and organizations, noting the recognition that all groups and organizations have their unique requirements.
34. The Commission is satisfied with the efforts made by CNSC staff to date in respect of Indigenous consultation. The Commission expects that CNSC staff will continue to provide the identified Indigenous groups and organizations with timely project updates, information and an opportunity to listen to and to discuss any concerns at key points during the EA process, including the review of GFP's EIS, CNSC staff's EA Report, and other project-related documentation. The Commission recognizes that many Indigenous groups and organizations are at a lower capacity because of the COVID-19 pandemic. The Commission also understands that CNSC staff has planned for modified Indigenous consultation activities because of the pandemic. The Commission expects that, to the extent possible, CNSC staff accommodate the Indigenous groups and organizations with which it plans to carry out engagement and consultation activities throughout the upcoming EA and licensing processes.
35. The Commission is satisfied with the preliminary Indigenous engagement activities carried out by GFP for this project. The Commission expects GFP to continue to provide updates on the progress of its Indigenous engagement plans in future iterations of the Indigenous Engagement Report for the project. The Commission directs CNSC staff to continue to monitor GFP's progress throughout the regulatory review process to ensure compliance with REGDOC-3.2.2 and CEEA 2012 requirements.

### *3.2.2 Indigenous and Public Participation*

36. The Commission recognizes that section 24 of CEAA 2012 requires that the public be provided with an opportunity to participate in an EA. CNSC staff submitted that Indigenous groups and organizations, and the public were provided 60 days to review and comment on the MMR project description and that, in response, a total of 98 submissions were received. CNSC staff further submitted that 47 submissions had expressed a general opposition to small modular reactors rather than commenting on the project description. As such, these submissions were considered to be out of scope in regard to the opportunity to comment on the MMR project description. CNSC staff submitted that it had communicated with commenters about the reasons that their submission was not considered in the project description comment phase.
37. The Commission notes that Appendix A of CMD 20-H102 includes a link to the detailed disposition table of the 51 submissions that were within the scope of the project description comment opportunity, as well as CNSC staff's responses to the comments. CNSC staff reported that the submissions from Indigenous groups and organizations encompassed comments regarding ongoing and active consultation between GFP and the Indigenous groups and organizations, as well as sharing any future Indigenous engagement plans. CNSC staff further reported that the complete table of comments and CNSC staff responses had been shared with all of the commenters, and that it is posted on the Canadian Impact Assessment Registry.<sup>18</sup>
38. CNSC staff submitted that it had sought input from Indigenous groups and organizations on how they would like to be engaged during the EA process. Indigenous groups and organizations provided comments on the importance of early ongoing engagement by GFP with their communities and their participation in the EA process, including participant funding. CNSC staff submitted that it will provide regular updates directly to Indigenous groups and organizations throughout the regulatory process and that CNSC staff is committed to ongoing consultation and engagement with Indigenous groups and organizations on the MMR Project.
39. The Commission considered several interventions that expressed a concern about the adequacy of prior engagement and of future participation opportunities in relation to the MMR Project. CNSC staff submitted that the public would have several opportunities to participate in upcoming phases of this project, including the EIS once submitted by GFP, CNSC staff's EA and the licensing process that will be considered via a public hearing with participant funding.
40. In considering CNSC staff's disposition of intervenors' comments, the Commission directs CNSC staff to ensure that intervenors get specific information of where the specific regulatory requirements related to their submissions can be found in future phases of this project. Furthermore, the Commission requests CNSC staff, for the future phases of this project, to disposition submissions from members of the public in a manner

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<sup>18</sup> Public Registry: <https://iaac-aeic.gc.ca/050/documents/p80182/134676E.pdf>, accessed June 19, 2020.

that demonstrates the appropriate stage of the project for certain considerations and where such considerations may be applicable, in a way that facilitates public participation throughout the phases of the project.

41. The Commission is satisfied with the efforts made by CNSC staff in regard to the comment period for the project description. The Commission recognizes that future Indigenous and public participation opportunities for this project will include a public comment period on GFP's draft EIS, on CNSC staff's draft EA Report and the CNSC's public hearing process in respect of the EA decision and licensing.

### *3.2.3 Participant Funding*

42. Pursuant to section 58 of CEAA 2012, a responsible authority must establish a participant funding program (PFP). Pursuant to paragraph 21(1)(b) of the NSCA, the CNSC has the authority to provide participant funding through its own PFP in order to enhance Indigenous and public participation in the regulatory review of a project, and to bring value-added information to the Commission. In respect of the MMR Project, this includes the EA process itself. Participant funding through the CNSC's PFP is awarded based on recommendations from an independent Funding Review Committee.
43. CNSC staff submitted that, in January 2020, up to \$20,000 in funding to participate in this EA scoping process was made available to Indigenous peoples, members of the public and stakeholders to review CNSC staff's submission, and associated documentation concerning the EA scope of factors, and to provide the Commission with value-added information through topic-specific interventions. The FRC recommended that five applicants be provided with up to \$30,400 in participant funding. As such, \$30,400 in participant funding was awarded to the following recipients who submitted to the Commission written submissions in respect of EA scoping for the MMR Project:
  - Algonquins of Ontario
  - Algonquins of Pikwakanagan First Nation
  - Canadian Environmental Law Association
  - David Winfield
  - Kebaowek First Nation
44. CNSC staff reported that the CNSC planned to award participant funding in respect of the proposed MMR Project and proposed that the funding be offered in three phases. CNSC staff submitted that the first phase of funding consisted of \$30,400 for the EA scoping process. CNSC staff also proposed two more phases with funding of up to \$150,000 for each remaining phase. CNSC staff submitted that the planned second phase would be for the review of the draft EIS, while the third phase would be the MMR Project regulatory process, including a public hearing in respect of the Commission's EA and licensing decisions.

45. In its written submission, CNSC staff reported that it would continue to work with intervenors to discuss any comments and/or concerns and to explain, when within the scope of the EA, how these concerns or other factors would be addressed in the EA process.
46. Based on the information submitted for this hearing, the Commission is satisfied that Indigenous peoples, members of the public and stakeholders were encouraged to participate in this EA scoping phase of the MMR Project, while recognizing that there are several other phases where interested persons will have the opportunity to participate.

### **3.3 Scope of the Environmental Assessment**

47. As the RA for the proposed project and pursuant to paragraph 19(2)(a) of CEAA 2012, the CNSC is required to determine the scope of factors to be considered in an EA through its analysis of proponent submissions and in response to comments from Indigenous groups and organizations, and the public. The Commission notes that GFP had identified the scope of the project in its project description and that the scope includes the construction of a nuclear plant containing a high temperature gas-cooled reactor and an adjacent plant that is required to convert heat energy to electrical energy. CNSC staff submitted a detailed description of the primary project components and that it was satisfied that the project components and activities that GFP listed in its project description were appropriate.
48. CEAA 2012 mandates that the factors in paragraphs 19(1)(a) to (h) be considered in all EAs. The Commission recognizes the concerns raised by the Canadian Association of Physicians for the Environment, Northwatch, CARN, the Canadian Coalition for Nuclear Responsibility and CELA in regard to the level of detail each factor mandated in CEAA 2012, paragraphs 19(1)(a) to (h) would be considered in the EA. The Commission also considered that some interventions expressed concerns about factors that are not captured by those mandated by CEAA 2012, including but not limited to, cumulative environmental effects; effects from malfunctions and accidents; purpose of the project; and follow-up program and monitoring. The Commission directs CNSC staff to provide more information to Indigenous groups and organizations and stakeholders in obtaining information in regard to how specific regulatory requirements applicable to this project will be considered during the EA and licensing phases of this project.
49. Further on that topic, CNSC staff submitted that many of the areas of concern to intervenors were addressed in detail in the EIS Guidelines, REGDOC-1.1.1 and REGDOC-2.9.1.
50. As set out in paragraph 19(1)(a) of CEAA, the Commission expects that the environmental effects due to malfunctions and accidents (M&As) be taken into consideration as part of the EIS. The Commission notes the concerns raised by intervenors with respect to M&As and is satisfied with the requirements set out in REGDOC-1.1.1, and particularly Appendix F, delineating what a proponent must address with respect to M&As. Specifically, the Commission is satisfied with the requirement that

GFP shall demonstrate that the accident frequencies related to small and large releases to the environment are well below the frequency limits.<sup>19</sup>

51. CNSC staff reported that REGDOC-2.9.1 and the EIS Guidelines provide the proponent with generic guidelines of the factors to be considered as part of the EA. CNSC staff further reported that project specific guidelines were not developed as generic guidelines better allow for work, on an adaptive basis, on additional topics that may arise as the project and/or science evolves during an EA. The Commission encourages CNSC staff to share with Indigenous groups and organizations, the public, and stakeholder when available, the details of this approach and of how the CEAA 2012 mandated factors will be considered during the EA.
52. The Commission notes the concerns raised by several intervenors that there is a need for EIS guidelines that are more specific to the MMR. In considering the points raised by both CNSC staff and intervenors, the Commission is of the opinion that given the broad nature of paragraphs 19(a) to (h) of CEAA, the EIS guidelines should provide granularity with respect to what information would be covered within the scoping factors. Therefore, the Commission directs CNSC staff to update the EIS Guidelines to include more information on what information would be covered within the scoping factors to facilitate greater transparency in the EA process as the MMR Project evolves. The Commission directs CNSC staff to ensure the EIS Guidelines, when updated, are made available and accessible to Indigenous groups and organizations, members of the public, and stakeholders.
53. CNSC staff submitted that, in accordance with subsection 19(3) of CEAA 2012, the MMR Project EA will consider community knowledge and Indigenous knowledge, where available and accessible. CNSC staff further submitted that it has taken into account that the project is within the traditional territory and land claim areas of the Algonquins of Ontario, Algonquins of Pikwakanagan and Algonquin Anishinabeg Nation Tribal Council's member First Nations, as well as within the Williams Treaties territory, and traditional harvesting territory of the Métis Nation of Ontario. The Commission is of the view that community and Indigenous knowledge needs to be a key component of the EA.
54. The scope of factors will include the items mandated by paragraph 19(1)(a) to (h) of CEAA 2012. The scope will not include paragraphs 19(1) (i) and (j). CEAA 2012, paragraph 19(1)(i) provides that EAs must take into account "*the results of any relevant study conducted by a committee established under section 73 or 74 (of CEAA 2012).*" CNSC staff submitted that paragraph 19(1)(i) does not apply to the MMR Project EA as there are no relevant regional studies conducted by a committee established by the Minister to consider. The Commission concurs with this conclusion.
55. CEAA 2012, paragraph 19(1)(j) provides that EAs must take into account "*any other matter relevant to the environmental assessment that the responsible authority, or — if the environmental assessment is referred to a review panel — the Minister, requires to be*

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<sup>19</sup> Frequency limits for small and large releases to the environment: 10<sup>-5</sup> for the small release frequency safety goal for evacuation and 10<sup>-6</sup> for the large release frequency safety goal for relocation.

*taken into account.*” The Commission concurs that no additional factors needed to be included in the scope of factors for this EA.


56. CNSC staff submitted that, following the Commission’s decision in respect of the scope of factors to be considered for the MMR Project EA, the Commission’s Record of Decision and the description of the factors to be taken into account in the EA would be posted on the Canadian Impact Assessment Registry, in accordance with paragraph 79(2)(b) of CEAA 2012. CNSC staff also submitted that the Commission’s decision in this matter would be provided to the identified list of Indigenous groups, organizations, members of the public and the EA project distribution list.
57. The Commission notes the concerns raised by intervenors that matters such as the transportation of low level radioactive waste and intermediate level radioactive waste, nuclear non-proliferation, ownership liability and fuel fabrication are not included in the scoping factors. CNSC staff submitted that GFP will be required to address these matters during the EIS and/or the licensing process. The Commission is satisfied that these matters will be addressed in future phases and encourages the public to participate throughout the process.
58. CNSC staff reported that, following the Commission’s decision in this matter, GFP would prepare an EIS for the MMR Project in accordance with the determined scope and the EIS Guidelines.
59. The Commission is satisfied with the information provided by CNSC staff in regard to the scope of the factors to be considered for the MMR Project EA. Specifically, the Commission is satisfied that the EIS Guidelines, REGDOC-1.1.1 and REGDOC-2.9.1 provide sufficient information to ensure that all factors are adequately addressed by GFP during the EIS. The Commission does agree with the concerns expressed by intervenors that the EIS guidelines should provide granularity with respect to what information would be covered within the scoping factors. The Commission expects that CNSC staff will update the EIS guidelines to provide greater transparency with Indigenous groups and organizations, members of the public, and stakeholders when completed.
60. The Commission understands, however, that, should a relevant factor come to light during the EA, the CNSC is required to take this factor into the EA per paragraph 19(1)(j) of CEAA 2012. Therefore, the Commission directs CNSC staff to report to the Commission, as soon as practicable, on any issues arising during the conduct of the EA that could warrant the Commission to reconsider the above scoping decision.

#### **4.0 CONCLUSION**

61. The Commission has considered the information submitted by CNSC staff and intervenors as presented on the record.



62. The Commission, pursuant to section 19 of CEAA 2012, determines the scope of the factors for the EA for the MMR Project proposed by GFP to include the factors mandated by paragraphs 19(1)(a) to (h) of the CEAA 2012, with no additional factors.
63. The Commission notes that its decision in this matter is in regard to the factors to be considered for EA to be carried out for the MMR Project pursuant to section 15 of CEAA 2012 and not a licensing decision pursuant to section 24 of the NSCA.
64. Future participation opportunities will be provided to the public and Indigenous groups as the review of this project proceeds, including: a comment period on the draft EIS; a comment period on CNSC staff's draft EA Report; and potential intervention in the Commission public hearing process. The Commission also understands that there will be future opportunities for participation through the CNSC PFP, for the review of the draft EIS and the MMR Project regulatory process, including a public hearing in respect of the Commission's EA and licensing decisions.
65. GFP shall prepare an EIS for the proposed project in accordance with the EIS Guidelines, with the estimated timeline for GFP's submission of a draft EIS to be in spring of 2021. The Commission understands that the draft EIS will be made available on the Canadian Impact Assessment Registry.
66. The Commission encourages interested members of Indigenous groups and organizations and members of the public to participate in future public Commission proceedings in respect of the MMR Project.
67. The Commission directs CNSC staff to report to the Commission or any issues arising during the conduct of this EA that could warrant the Commission to reconsider the above scoping decision.

**Velshi,  
Rumina**  Digitally signed by Velshi, Rumina  
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July 16, 2020

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Rumina Velshi  
President,  
Canadian Nuclear Safety Commission

Date

## Appendix A – Intervenors

Intervenors – Written Interventions	Document Number
Ken Chaplin	CMD 20-H102.1
New Brunswick Power	CMD 20-H102.2
Evelyn Gigantes	CMD 20-H102.3
David Winfield	CMD 20-H102.4
Algonquins of Ontario	CMD 20-H102.5
Canadian Environmental Law Association and Dr. M.V. Ramana	CMD 20-H102.6
Kebaowek First Nation	CMD 20-H102.7
Algonquins if Pikwakanagan First Nation	CMD 20-H102.8
Organization of Canadian Nuclear Industries	CMD 20-H102.9
AECOM Canada Ltd.	CMD 20-H10210
Kaitlan Cavanaugh	CMD 20-H10211
Canadian Nuclear Association	CMD 20-H102.12
Canadian Nuclear Laboratories	CMD 20-H102.13
PCL Industrial Constructors Inc.	CMD 20-H102.14
Alberta Nuclear Nucleus Ltd.	CMD 20-H102.15
County Sustainability Group	CMD 20-H102.16
Donna Mendelsohn	CMD 20-H102.17
Todd De Rick	CMD 20-H102.18
Atomic Energy of Canada Limited	CMD 20-H102.19
Women in Nuclear	CMD 20-H102.20
Algonquin Eco Watch	CMD 20-H102.21
Canadian Association of Physicians for the Environment	CMD 20-H102.22
Canadian Nuclear Workers Council	CMD 20-H102.23
Council of Canadians, Saint John Chapter	CMD 20-H102.24
Old Fort William Cottagers' Association	CMD 20-H102.25
Terrestrial Energy Inc.	CMD 20-H102.26
Concerned Citizens of Refrew County and Area	CMD 20-H102.27
Coalition for Responsible Energy Development in New Brunswick	CMD 20-H102.28
North American Young Generation in Nuclear	CMD 20-H102.29
Doctors for Nuclear Energy	CMD 20-H102.30
Nuclear Waste Watch on behalf of 22 public interest and community groups	CMD 20-H102.31
Environment North	CMD 20-H102.32
Northwatch	CMD 20-H102.33
Molly Lawson Mulloy	CMD 20-H102.34
Anna Gent	CMD 20-H102.35
National Council of Women Canada	CMD 20-H102.36
Gordon Edwards	CMD 20-H102.37
Gordon McDowell	CMD 20-H102.38
Generation Atomic	CMD 20-H102.39
Citizens Against Radioactive Neighbourhoods (CARN) and Port Hope Community Health Concerns Committee (PHCHCC)	CMD 20-H102.40