



Canadian Nuclear
Safety Commission

Commission canadienne
de sûreté nucléaire

Record of Decision

DEC 19-H112

In the Matter of

Project
Proponent

NexGen Energy Ltd.

Subject

Decision on the scope of an environmental
assessment for the proposed Rook I Project

Date of
Decision

February 20, 2020

RECORD OF DECISION – DEC 19-H112

Project Proponent: NexGen Energy Ltd.

Address/Location: 3150 - 1021 West Hastings Street, Vancouver, BC
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Purpose: Decision on the scope of an environmental assessment for
the proposed Rook I Project

Project description
received: February 14, 2019

Date of decision: February 20, 2020

Location: Canadian Nuclear Safety Commission
280 Slater St., Ottawa, Ontario

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. NexGen Energy Ltd. (NexGen) submitted a description of its Rook I Project to the Canadian Nuclear Safety Commission¹ (CNSC) on February 14, 2019. NexGen has proposed to construct and operate a new uranium mine and mill on the Patterson Lake peninsula in northern Saskatchewan, approximately 155 km north of La Loche and 80 km south of the decommissioned Cluff Lake mine site. The proposed project would include underground and surface facilities to support the extraction and processing of uranium ore from the Arrow deposit, with an annual production of up to 14 million kg of triuranium octoxide (U₃O₈) over an operating period of 24 years.
2. Pursuant to section 15 of the *Canadian Environmental Assessment Act, 2012*² (CEAA 2012), which was in effect at the time the project description was submitted, the CNSC, as the Responsible Authority (RA) for the proposed project, was obliged to consider the application of CEAA 2012 in respect of the project.
3. The Rook I 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*³ made under CEAA 2012, requiring that an EA be carried out for the project. CNSC staff posted a Notice of Commencement of an EA (NOC) on the Canadian Impact Assessment Registry on May 2, 2019, as per section 17 of CEAA 2012, thus commencing the EA.
4. The *Impact Assessment Act*⁴ (IAA) came into force on August 28, 2019. However, its transitional provision stipulates that any EA of a designated project by the CNSC 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. In accordance with the transitional provision, this EA shall continue under CEAA 2012. On August 29, 2019, the CNSC issued a letter to advise NexGen of this fact, and the letter was posted on the Canadian Impact Assessment Registry.⁵
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.

¹ 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.

² S.C. 2012, c. 19, s. 52.

³ SOR/2012-147

⁴ S.C. 2019, c. 28, s. 1

⁵ *Notice of Commencement of an Environmental Assessment – Rook I Project*, <https://www.ceaa-acee.gc.ca/050/evaluations/document/129513?culture=en-CA&> (accessed January 1 2020), Impact Assessment Agency, issued on May 2, 2019.

Panel

6. 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 19-H112 and CMD 19-H112.A).

2.0 DECISION

7. 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 Rook I Project proposed by NexGen Energy Ltd. to include the factors mandated in paragraphs 19(1)(a) to (h) of the *Canadian Environmental Assessment Act, 2012*, with no additional factors.

8. 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 Rook I Project.
9. The Commission understands that NexGen will prepare an environmental impact statement (EIS) for the proposed project, as provided for by the CNSC's *Generic Guidelines for the Preparation of an Environmental Impact Statement pursuant to the Canadian Environmental Assessment Act, 2012*⁶ (the EIS Guidelines).
10. The Commission directs CNSC staff to report to the Commission on any issues arising during the conduct of the EA that could warrant the Commission to reconsider the above scoping decision.

3.0 ISSUES AND COMMISSION FINDINGS

11. In consideration of this matter, the Commission examined the completeness and adequacy of the information submitted by CNSC as presented in CMD 19-H112 and CMD 19-H112.A. The Commission notes that CNSC staff included in its submission a detailed revised description of the Rook I Project that was submitted by NexGen in April 2019, a disposition table of the questions and comments resulting from the Indigenous and public consultation on the project description, and the CEAA 2012 process map.

⁶ *Generic Guidelines for the Preparation of an Environmental Impact Statement Pursuant to the Canadian Environmental Assessment Act*, CNSC, May 2016.

3.1 Application of *Environmental Assessment Act, 2012*

12. The Commission notes that NexGen submitted its revised description for the Rook I Project to the CNSC in April 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 February 2019, in accordance with the transitional provision provided for by section 182 of the IAA, this project is to continue under CEAA 2012.
13. 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 recognizes that the EIS Guidelines provide proponents with the information required for the preparation of their technical studies related to the proposed project.
14. In its written submission, CNSC staff reported that, pursuant to section 20 of CEAA 2012, the relevant federal authorities were informed about the proposed project in order to confirm their future participation in the EA process. CNSC staff submitted that the following five federal authorities have confirmed their participation in and would provide the expertise relevant to the proposed project:
 - Environment and Climate Change Canada
 - Health Canada
 - Natural Resources Canada
 - Parks Canada
 - Transport Canada
15. The Commission notes that the project is also subject to the EA requirements of the Government of Saskatchewan under *The Environmental Assessment Act* (EAA).⁷ CNSC staff submitted that NexGen's project description had been written to meet the requirements of both the federal project description under CEAA 2012 and the provincial technical proposal under the EAA. CNSC staff also submitted that both the federal and provincial EAs will be coordinated to the extent possible, noting that the provincial EA process involves key steps that are similar to those of the CEAA 2012 process, and that NexGen would submit a single EIS to meet the requirements of both the federal and provincial EA processes.

3.2 Consultation on the Scope of the EA

3.2.1 Indigenous Consultation and Engagement

16. The Commission recognizes that the common law duty to consult with Indigenous peoples applies when the Crown contemplates actions that may adversely affect potential

⁷ Statutes of Saskatchewan (S.S.), c. E-10.1

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*.⁸

17. CNSC staff submitted that it had identified ten Indigenous groups and organizations with potential interest in the Rook I Project, had provided each identified group with the NOC and had solicited comments on NexGen's project description as part of the 30-day comment period. CNSC staff reported that the identified Indigenous groups and organizations with potential interest in the project include:
- Clearwater River Dene Nation (Treaty 8)
 - Athabasca Chipewyan First Nation (Treaty 8)
 - English River First Nation (Treaty 10)
 - Black Lake Denesuline First Nation (Treaty 8)
 - Fond-du-Lac Denesuline First Nation (Treaty 8)
 - Métis Nation – Saskatchewan
 - Buffalo River Dene Nation (Treaty 10)
 - Birch Narrows Dene Nation (Treaty 10)
 - Ya'thi Néné Lands and Resource Office (representing the Athabasca Basin communities including Black Lake Denesuline First Nation and Fond-du-Lac Denesuline First Nation)
 - Meadow Lake Tribal Council
18. The Commission notes that CNSC staff's *Preliminary Indigenous Consultation Report: Rook I Project; Patterson Lake, Saskatchewan*⁹ details Indigenous and treaty rights in relation to the proposed project. The Commission's consideration of the comments received on NexGen's project description by way of the 30-day review period is in the next section of this *Record of Decision*.
19. CNSC staff submitted that CNSC staff and NexGen had offered to meet with Indigenous groups and other organizations that had expressed an interest in the proposed project. CNSC staff provided details of meetings that were carried out in September and October of 2019 in Prince Albert, Saskatchewan in order to discuss CNSC-regulated uranium mines and mills, to discuss the EA and licensing processes and to build relationships with the Indigenous groups. 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 duty to consult with Indigenous peoples is fulfilled.

⁸ *Constitution Act, 1982*, Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.)

⁹ *Preliminary Indigenous Consultation Report: Rook I Project; Patterson Lake, Saskatchewan*, CNSC, July 2019.

20. The Commission considered the Indigenous engagement activities that had been conducted to date by NexGen. CNSC staff submitted that it was satisfied with the preliminary Indigenous engagement activities carried out by NexGen and that, in accordance with REGDOC-3.2.2, *Indigenous Engagement*,¹⁰ NexGen had submitted its preliminary Indigenous Engagement Report on February 14, 2019. CNSC staff further submitted that this report outlined the Indigenous groups with which NexGen planned to engage during the proposed project, NexGen's planned Indigenous engagement activities and the concerns that had been raised to date by the identified Indigenous groups.
21. CNSC staff submitted that NexGen had organized site visits and meetings with the identified Indigenous groups and organizations in order to introduce the Rook I Project and to discuss any potential impacts on Indigenous or treaty rights, land use or other concerns about the project. CNSC staff noted that, during those meetings, NexGen also provided clarification regarding the project and solicited early feedback on the project engineering and design.
22. CNSC staff reported that, throughout the EA process for the Rook I Project, it would verify NexGen's compliance with REGDOC-3.2.2 and CEAA 2012, including the gathering of any relevant Indigenous knowledge and traditional land use information from identified Indigenous groups to inform the EA.
23. 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 with timely project updates, information and an opportunity to discuss any concerns at key points during the EA process, including the review of NexGen's EIS, CNSC staff's EA Report, and other project-related documentation.
24. The Commission is satisfied with the preliminary Indigenous engagement activities carried out by NexGen for this project. The Commission expects NexGen to continue to provide updates on the progress of its Indigenous engagement plan in future iterations of the Indigenous Engagement Report for the project, as detailed in the information submitted for this hearing. The Commission directs CNSC staff to continue to monitor NexGen's progress throughout the regulatory review process to ensure compliance with REGDOC-3.2.2 and CEAA 2012 requirements.

3.2.2 Indigenous and Public Participation, and Participant Funding

25. 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 the first public and Indigenous participation opportunity that the CNSC offered was a 30-day review of the Rook I Project description and that, in response, submissions had been received from four Indigenous groups including the Ya'thi Néné Land and Resource Office (Ya'thi Néné), the Clear Water Dene Nation, the Métis Nation – Saskatchewan,

¹⁰ CNSC Regulatory Document, REGDOC-3.2.2, *Indigenous Engagement*, version 1.1, 2019.

and the Athabasca Chipewyan First Nation. No submissions were received from members of the public.

26. The Commission notes that Table 3 of CMD 19-H112 includes CNSC staff responses to key themes found in the four submissions received during the comment period and that Appendix C of CMD 19-H112 includes a detailed disposition table of these submissions, as well as CNSC staff's responses. CNSC staff reported that the submissions from Indigenous groups encompassed questions and comments regarding the importance of: the protection of ecological systems; environmental monitoring; traditional land use; engagement plans; environmental and human health impact; protection of Indigenous and/or treaty rights; flexible, varied and continued engagement by NexGen; the EA taking into consideration the cumulative effects; and the EA process. CNSC staff further reported that the disposition table had been shared with all of the Indigenous groups that submitted comments, and that it is posted on the Canadian Impact Assessment Registry.¹¹
27. Pursuant to section 58 of CEEA 2012, an RA 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 Rook I Project, this would include the EA process itself. Participant funding through the CNSC's PFP is awarded based on recommendations from an independent funding review committee.
28. CNSC staff reported that the CNSC planned to award participant funding in respect of the proposed Rook I Project and proposed that the funding be offered in two phases, consisting of \$150,000 for each phase. CNSC staff submitted that the planned first phase of funding would be for the review of the draft EIS, while the second phase would be for the remainder of the Rook I Project regulatory process, including a public hearing to consider the regulatory approval of the EA.
29. CNSC staff submitted that it had sought input from Indigenous groups and the public on how they would like to be engaged during the EA process. Indigenous groups provided comments on the importance of early ongoing engagement by NexGen with the communities and participation in the EA process including funding. CNSC staff submitted that it will provide regular updates directly to Indigenous groups throughout the regulatory process and that CNSC staff is committed to ongoing consultation and engagement with Indigenous groups and the public.
30. 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 NexGen's draft EIS, on CNSC staff's EA Report and the CNSC's public hearing process in respect of the EA decision. The Commission notes that the availability of participant funding for this project will be announced by the CNSC

¹¹ Canadian Impact Assessment Registry – Rook I Project, <https://iaac-acic.gc.ca/050/evaluations/proj/80171> (accessed 13 December 2019).

following this decision.

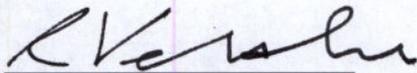
3.3 Scope of the Environmental Assessment

31. 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 the public. The Commission notes that NexGen had identified the scope of the project in its submitted project description and that the scope includes direct activities related to the mining and processing of uranium ore, as well as ancillary activities that support the project. CNSC staff submitted a detailed description of the primary project components and that it was satisfied that the project components and activities that NexGen listed in its project description were appropriate.
32. CEAA 2012 mandates that the factors in paragraphs 19(1)(a) to (h) be considered in all EAs. CNSC staff submitted that the Rook I Project EA will consider community knowledge and Indigenous knowledge, where available and accessible, taking into account that the project is within Treaty 8 territory and Métis Nation-Saskatchewan Northern Region 2, as well as the traditional territories of many Indigenous groups, in accordance with subsection 19(3) of CEAA 2012.
33. 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 Rook I Project EA as there are no relevant regional studies conducted by a committee established by the Minister to consider.
34. 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 taken into account.*” CNSC staff reported that, based on its review of the proposed EA scope and on the comments about the project submitted by the Ya’thi Néné, the Clear Water Dene Nation, the Métis Nation – Saskatchewan, and the Athabasca Chipewyan First Nation, the relevant EA factors are those set out in paragraphs 19(1)(a) to (h) of CEAA 2012. As such, CNSC staff was of the view that no additional factors needed to be included in the scope of factors for this EA.
35. CNSC staff submitted that, following the Commission’s decision in respect of the scope of factors to be considered for the Rook I 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 ten identified Indigenous groups and the EA project distribution list.

36. CNSC staff reported that, following the Commission's decision in this matter, NexGen would prepare an EIS for the Rook I Project in accordance with the determined scope and the EIS Guidelines.
37. The Commission is satisfied with the information provided by CNSC staff in regard to the scope of the factors to be considered for the Rook I Project EA.

4.0 CONCLUSION

38. The Commission has considered the information submitted by CNSC staff as presented on the record.
39. The Commission, pursuant to section 19 of CEEA 2012, determines the scope of the factors for the EA for the Rook I Project proposed by NexGen to include the factors mandated by paragraphs 19(1)(a) to (h) of the CEEA 2012, with no additional factors.
40. The Commission understands that, pursuant to subsection 19(3) of CEEA 2012 and taking into account that the proposed project is located within Treaty 8 territory and Métis Nation-Saskatchewan Northern Region 2, as well as the traditional territories of many Indigenous groups, the EA for the Rook I Project shall consider Indigenous traditional knowledge and community knowledge.
41. The Commission notes that NexGen shall prepare an EIS for the proposed project in accordance with the EIS Guidelines, with the estimated timeline for NexGen's submission of a draft EIS for the proposed project to be late fall of 2020.
42. The Commission directs CNSC staff to report to the Commission on any issues arising during the conduct of this EA that could warrant the Commission to reconsider the above scoping decision.



Rumina Velshi
President,
Canadian Nuclear Safety Commission

FEB 20 2020

Date