



GITANYOW HEREDITARY CHIEFS

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Patrick Smook
Authorized Signatory, Commission Delegated Decision Maker
BC Energy Regulator (Oil & Gas Commission)
Via Email Only: Patrick.Smook@bc-er.ca

RE: PRGT PIPELINE PERMITS CONDITIONS

On behalf of the Gitanyow Hereditary Chiefs (“GHC”), I write with respect to the Prince Rupert Gas Transmission project (“PRGT”), which is proposed to pass through Gitanyow traditional territory. We seek to confirm our understanding of the conditions in the Primary Permits held by PRGT Ltd., namely permits 9708456, 9708458, 9078459, 9078460, 9078461, 9078462, 9078463, 9078510, 9078511, 9078512, and 9078513 (together, the “Permits”).

1. What activities are included in the definition of “construction”

The Permits impose obligations that must be fulfilled in relation to the start of construction, which is defined as:

“construction activities” or “construction” means clearing, site preparation, trench excavation, pipe installation and any other activities required to construct a pipeline.

However, is it unclear whether this definition covers all the activities that are approved under the other project permits (e.g. investigative use permit, road permits, or water authorizations).

Please explain:

- a) What activities are captured in the phrase “any other activities” in the definition of “construction” in the Permits.

2. Confirmation of final investment decision for LNG facility

All of the 2022 and 2023 versions of the Permits contain the following condition:

6. The Permit Holder must not commence construction until it has submitted to the Commission (postpermitrequests@bcogc.ca) a confirmation, by a corporate officer, that a downstream LNG facility has contracted Prince Rupert Gas Transmission as

its primary supplier and that a positive final investment decision has been made on that LNG facility.

The 2022 and 2023 versions of permits for the pipeline segments (9708456, 9708458, 9078459, 9078460, 9078461, 9078462, 9078463) state that “*The BCER replaces condition #6 of the permit with the following*” and then list additional conditions. Nevertheless, Condition 6 remains in both the 2022 and 2023 versions of these permits. The permits for the Compressor Stations (9078510, 9078511, 9078512) do not include any statement that Condition 6 has been replaced, but rather appear to have simply added further Conditions to the permits.

As such, it is unclear whether Condition 6 is still applicable to PRGT Ltd.

Please explain whether:

- a) Condition 6 (submission to BCER of confirmation of a positive final investment decision) is still in force and to which segments of the pipeline and compressor stations it applies; and
- b) The Regulator has received a submission from PRGT Ltd. pursuant to Condition 6.

Further,

- c) if Condition 6 has been removed or applies only to certain segments of the pipeline and compressor stations, will BCER commit to meaningful consultation with First Nations such as Gitanyow regarding reinstatement of Condition 6, and/or its broader application to other segments of the project, as a result of further extension or renewals of the permit.

3. Who is an “impacted First Nation”?

Condition 7 of permit 9708461 states that:

Prior to commencement of construction activities on any portion of the pipeline right of way or workspace, the Permit Holder must engage with an impacted First Nation and consider any relevant information made available by a First Nation, and conduct an investigation of the potential effects of the operation of the pipeline on the current use of land and resources for traditional purposes by the impacted First Nation. Relevant information may include but not be limited to updated wildlife studies, culturally modified trees, cache pits, house pits, grave sites, pictograph sites, smoke houses, cabins, artifacts, and areas traditionally used for camping, hunting, fishing and berry picking located within the pipeline right of way or workspace.

Condition 8 of permit 9708461 further states that “The Permit holder must submit the Regulator (postpermitrequests@bc-er.ca) and send copies to impacted First Nations, at least six months prior to commencing construction activities on any portion of the pipeline right of way or work space, a report describing the site-specific mitigation plans” including specific information requirements such as a summary of engagement with impacted First Nations.

Similar Conditions are included in the other Permits.

While Gitanyow is named in permit 9708461 specifically, the term “impacted First Nation” is not defined in the Permits and it is unclear who determines who is an “impacted First Nation” and what criteria is applied. We note that Condition 7 above, and its equivalent in the other Permits, also require the Permit Holder to consider relevant information made available by any First Nation, even if they are not an “impacted First Nation”.

Please explain:

- a) Who is responsible for determining which First Nations are considered “impacted First Nations” for each of the Permits, and what criteria are used to make this determination;
- b) Whether the BCER considers Gitanyow to be an “impacted First Nation” in relation to all the Permits, and if not, for which of the Permits does the BCER consider Gitanyow to be an “impacted First Nation”;
- c) Whether the Permit Holder is required to consider relevant information of any First Nation affected by the entire PRGT project, even if they are not considered to be an “impacted First Nation” with respect to activities under a certain permit, and how such a First Nation can provide relevant information.

Further, please confirm that

- d) Gitanyow will be provided with the report referenced in Condition 8, based on engagement with Gitanyow as described in Condition 7, at least six months before construction is commenced on *any portion* of the project permitted under the Permits.

4. Cumulative effects assessment

Condition 4 requires the Regulator to carry out a cumulative effects assessment in consultation with “impacted Indigenous nations”. However, it is unclear who is considered an “impacted Indigenous nation”, the nature of consultation, and the nature of the cumulative effects assessment.

Please explain:

- a) What First Nations are considered “impacted Indigenous nations” for the purposes of Condition 4, who is responsible for this determination, and what criteria are used to make this determination;
- b) The scope and timeline of consultation with an “impacted Indigenous nation” in the cumulative effects assessment;
- c) The scope and timeline of the cumulative effects assessment; and
- d) Whether the Regulator has received notice from the Permit Holder pursuant to Condition 4.

Gitanyow is a member of the Skeena Sustainability Assessment Forum (“SSAF”), which was initiated during the initial round of LNG development proposals (2015-2018) and established to

address outstanding issues of environmental and cultural concerns. Since its establishment, the participating First Nations and provincial ministries have developed key data and environmental threshold outputs relevant to cumulative effects assessments in the PRGT project area. We have recently confirmed with the provincial representatives of SSAF that there has been no contact made by either the PRGT proponent or provincial regulators to include such data and thresholds into the PRGT cumulative effects assessment. This is a significant oversight that needs to be addressed.

5. Implementation and expiry of the ancillary permits

It is unclear from the information on the BCER website whether the work that is authorized under the ancillary permits has been completed. It is also unclear from these permits when they expire.

Please explain:


- a) The status of the work authorized under the ancillary permits; and
- b) The expiry dates of the permits.

6. Requesting improved engagement

In recent communications between BCER and Gitanyow, requests for time extensions for review of permit extensions made by Gitanyow were rejected. Gitanyow and the BCER, and the provincial government more broadly, do not currently have a government-to-government agreement in place that provides a jointly-developed consultation or engagement process for provincial decisions impacting Gitanyow territory, rights and title. Gitanyow reiterates the request for more meaningful engagement, consideration of timeline requests from Gitanyow, and action to ensure an appropriate government-to-government foundation supports all engagement and consultation requests from the BCER to Gitanyow.

I look forward to your response.

Sincerely,



Malii/Glen Williams

President & Chief Negotiator

Cc: Nathan Cullen, MLA Stikine