



GITANYOW HEREDITARY CHIEFS

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June 11, 2024

Ryan Stark
Manager, Decision Support
British Columbia Energy Regulator
Ryan.Stark@bc-er.ca

Dear Mr. Stark,

RE: Prince Rupert Gas Transmission Project

The Gitanyow Hereditary Chiefs write to seek clarity from the BC Energy Regulator (“BCER”) regarding a request to commence construction of the Prince Rupert Gas Transmission Project (“PRGT”). Furthermore, Gitanyow sets out its understanding of the required cumulative effects assessment of the project, which has yet to be carried out, and seeks BCER’s response.

Context: PRGT intention to commence construction

The Gitanyow Hereditary Chiefs were recently advised by a letter from the PRGT proponent that it intends to begin project construction work in August 2024 and that, in PRGT’s words, “the required permits are in place to initiate this work on Nisga’a Lands.” PRGT’s letter advised that a construction notice has been submitted to the Environmental Assessment Office (“EAO”), but did not provide the construction notice to Gitanyow.

Gitanyow has now obtained the PRGT construction notice by request to the EAO. The construction notice states:

Construction of the Project is scheduled to commence on August 24, 2024, subject to the successful closing of the sale of PRGT entities to Western NLG and Nisga’a Lisims Government (NLG). Construction activities will be initiated within Nisga’a Lands. The NLG has been notified, and a Notice of Construction Start shall also be provided to the BC Energy Regulator (BCER) in alignment with the requirements of the BC Pipeline Regulation for BCER Pipeline Permit Section 5B.

Splitting of BCER “Section 5” permit

On February 9, 2024, Gitanyow sent a letter to the BCER posing a number of questions about the PRGT permits, including questions relating to the notice and reports that Gitanyow must receive prior to construction. On the same day, BCER sent a letter to Gitanyow proposing an “administrative amendment” to BCER Permit 9708461 for Section 5 of the PRGT pipeline crossing Gitanyow Lax’yip (the “Section 5 Permit”), to separate the permitted section of pipeline into three different sections of permitted pipeline. BCER requested any response from Gitanyow regarding the administrative amendment on a 14-day turnaround.

BCER responded to the questions in Gitanyow’s February letter on February 28, 2024, but mentioned the administrative amendment only briefly in a footnote. In answering Gitanyow’s questions regarding pre-construction notice and reports, the BCER was not transparent that the administrative amendment would apparently have the effect that Gitanyow would no longer be provided with pre-construction notice or reports for areas within the Section 5 Permit as originally required. This appears to have occurred with “Section 5B” of the pipeline referenced in the construction notice, for which no report has been provided to Gitanyow.

BCER stated in its February 9 letter that the Section 5 Permit was proposed to be further segmented in part due to “concerns raised by the Nisga’a Nation to the BCER during its engagement, particularly in relation to permit conditions that have the potential to interfere with the Nisga’a Nation’s exercise of its legislative authority in respect of how they use and administer Nisga’a Lands”, but BCER did not elaborate on the meaning of this statement. In light of the recent construction notice, it now seems clear that BCER has known since at least February of PRGT’s proposal to commence pipeline construction within a smaller segment of the Section 5 Permit (relating to Nisga’a Lands), and was aware that segmentation of the Section 5 Permit via administrative amendment would remove notice and reporting requirements to Gitanyow prior to such construction, yet did not share this information with Gitanyow as part of the administrative amendment referral or otherwise.

Gitanyow objects to this reduction in notice and reporting to Gitanyow from the original Section 5 Permit requirements, which does not align with BCER’s representation in its February 9 letter that (emphasis added): “All applicable mitigations (including environmental management plans and access management plans), regulatory requirements and permit conditions remain as originally shared with your Nation during consultation on the original application.”

Requesting information from BCER

Gitanyow has been provided no reports or specific information from PRGT, and received no communication whatsoever from the Province (other than the EAO’s response to Gitanyow’s request for the construction notice), regarding PRGT’s attempt to commence construction on the project.

Gitanyow requests that BCER share with Gitanyow any pre-construction information or materials that would have been provided to Gitanyow under any segments of the original Section 5 Permit prior to the administrative amendment. Gitanyow also requests that BCER provide to Gitanyow the new BCER permits for all three segments of the original Section 5 Permit (i.e. permits for what Gitanyow presumes are now called sections “5A”, “5B” and “5C” of the PRGT pipeline). To Gitanyow’s knowledge, the final segmented permits resulting from the administrative amendment have not been shared with Gitanyow. As of the date of writing, the BCER online database for PRGT shows only the original Section 5 Permit, which is apparently no longer current.

Further, Gitanyow requests that the BCER provide its position in response to the following questions.

- a) Does BCER share PRGT’s view that project construction may commence on August 24, 2024, as stated in the construction notice?
- b) The Section 5 Permit includes conditions that must be satisfied prior to construction. As noted above, the BCER represented that the administrative amendment segmenting the Section 5 Permit did not change any permit conditions. For the BCER permit referenced in the construction notice:
 - o Which pre-construction conditions have been satisfied, in BCER’s view? Please provide specific information including the condition number, date on which the condition was satisfied, the rationale for BCER’s conclusion that the condition has been satisfied, and the relevant reports or documentation to support BCER’s rationale.
 - o Which pre-construction conditions have not yet been satisfied, in BCER’s view?

In its February 28 letter, BCER stated that the requirements for reporting six months prior to construction, as set out in conditions 7-8 of the Section 5 Permit, “...apply to all of the BCER Primary Pipeline Permits issued. To date, the BCER has not yet received any such report from PRGT necessary to satisfy the conditions as referenced above.” Gitanyow is therefore perplexed that the proponent has stated an intention to commence construction on August 24, 2024, since it would be impossible to comply with the six-month pre-construction reporting requirement by that date, given that BCER had received no report as of at least February 28. In answering the questions above, Gitanyow would appreciate any clarity BCER can provide on that issue.

A cumulative effects assessment of PRGT is required

Conditions 4-5 of the Section 5 Permit state as follows:

4. At least 6 months prior to construction start, the permit holder must provide the Regulator (postpermitrequests@bc-er.ca) with notice for the purpose of receiving the following:

- a. Direction from the Regulator on information requirements that will be needed for the Regulator, in consultation with impacted indigenous nations, to carry out an assessment of cumulative effects of the project,
 - b. An assessment of cumulative effects of the project, and
 - c. A description all of mitigations and offsets required during and post construction to address cumulative effects and to avoid, minimize and restore impacts to the current use of land and resources for traditional purposes by an impacted First Nation.
5. The Permit Holder must not start construction activities until it has received the assessment of cumulative effects of the project and description of mitigations and offsets referenced in (4) above.

According to BCER's February 9 letter, the administrative amendment did not change permit conditions, thus the cumulative effects conditions above apply to all segments of the original Section 5 Permit (and indeed to other pipeline sections, given that similar conditions are repeated in other BCER permits for PRGT).

Cumulative effects must be assessed for PRGT as a whole, in consultation with Gitanyow

Permit conditions 4-5 require BCER, in consultation with *all* Indigenous nations impacted by the project, to complete a cumulative effects assessment of the project *as a whole* prior to allowing construction under the relevant permits.

Based on the lack of any engagement with Gitanyow by BCER (or PRGT) on a cumulative effects assessment, and in light of some of the statements made in BCER's February 28, 2024 letter, Gitanyow is concerned that BCER may not be taking this approach to the cumulative effects assessment. Therefore, Gitanyow outlines below its understanding and expectations in relation to the BCER's cumulative effects assessment of PRGT.

- 1) BCER must assess cumulative effects of *the project*, as a whole.

The relevant permits plainly state that BCER must assess the cumulative effects of *the project*, not a segment of the project, prior to construction. This is consistent with the nature of a cumulative effects assessment. The BCER's February 28 letter states that: "The scope of assessing cumulative effects is understanding changes to environmental, social and economic values caused by the combined effect of past, present and potential future human activities and natural processes" (p. 3). This also requires holistic assessment of *the PRGT project as a whole* in relation to cumulative effects, rather than piecemeal consideration of segments of the PRGT pipeline siloed by BCER permitting. Notably, the EAO defines "cumulative effects" as: "a project's negative result(s)

combined with those of other past, present and reasonably foreseeable future projects and activities” (emphasis added).¹

It would be absurd for BCER to assess PRGT’s cumulative effects through a piecemeal, segment-by-segment consideration of particular portions of the pipeline, when the proponent seeks to commence construction under various BCER permits at different points in time. This would defeat the very purpose of a cumulative effects assessment.

- 2) BCER must consult with all “impacted indigenous nations” on the cumulative effects assessment.

BCER’s February 28 letter indicates that “how an Indigenous [nation] is assessed as being impacted” by BCER for the purposes of consultation on the cumulative effects assessment is interpreted by BCER in the same manner as determining an “impacted First Nation” for the purposes of a BCER permit (p. 3). This disregards the wording of the permit conditions and would have absurd results.

In its February 28 letter, BCER took the position that the term “impacted First Nation” in the PRGT permits refers only to a First Nation impacted by *a particular segment of the project addressed in that permit*. BCER’s interpretation would thus apparently result in BCER consulting on the PRGT cumulative effects assessment *only* with those First Nations whose territories are subject to an active construction request under a particular BCER permit, excluding other First Nations impacted by PRGT under other BCER permits in which PRGT has yet to seek a construction start. Such a disjointed, permit-by-permit approach would defeat the purpose of consultation on an assessment of the cumulative effects of the project, for the reasons noted above. Moreover, if construction has already commenced or been completed on other segments of the pipeline, then subsequent “consultation” with Gitanyow about how to assess the cumulative effects of PRGT would be hollow.

It is significant that the relevant permits use a different term in condition 4(a) to require BCER to carry out the cumulative effects assessment in consultation with “impacted indigenous nations”, as distinct from the term “impacted First Nations” that is otherwise used throughout the permits. The use of this different term in condition 4(a) confirms that the consultation required for the cumulative effects assessment is *broader* than only those “impacted First Nations” in whose territory the proponent is seeking to begin construction under a particular permit. BCER must instead consult on the cumulative effects assessment with all Indigenous nations impacted by PRGT. Again, this is consistent with the nature of assessing the cumulative effects of the project, which engages the rights of all Indigenous nations along the project route.

¹ British Columbia Environmental Assessment Office, *EAO User Guide: Introduction to Environmental Assessment Under the Provincial Environmental Assessment Act (2018)*, (March 30, 2020), online: https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/environmental-assessments/guidance-documents/2018-act/eao_user_guide_v101.pdf, p. 3.

3) PRGT's decade-old assessment materials do not satisfy BCER's obligations.

In responding to Gitanyow's questions about the cumulative effects assessment in its February 28 letter, BCER states "for reference" that PRGT carried out various assessments in its application for the environmental assessment certificate granted in 2014 (p. 4). For clarity, this does not satisfy the requirement for BCER to carry out the cumulative effects assessment of the project required by the relevant permits. Moreover, as noted in Gitanyow's letter to Ministers Osborne and Heyman dated May 14, 2024, there have been many significant changes in the ensuing decade, both with respect to "past, present and future human activities" such as projects that have been constructed, abandoned and newly proposed, including major proposed changes to PRGT itself (e.g. an entirely different terminus), as well as with respect to "natural processes" such as increasing climate impacts like wildfires. These are precisely the types of factors that must be incorporated into a cumulative effects assessment required by the relevant permits, and which are not addressed in PRGT's decade-old environment assessment application.

4) BCER has outstanding commitments to Gitanyow regarding the PRGT cumulative effects assessment.

In its February 28 letter, BCER stated: "Considering the proposed Project has not yet begun construction, there remains opportunity for Indigenous Knowledge to be incorporated into the planning and ongoing assessment for cumulative effects" (p. 4). Gitanyow is perplexed by the statement that cumulative effects assessment is "ongoing", because Gitanyow has received no specific information nor had any opportunity to engage on an assessment of PRGT's cumulative effects as required by the relevant permits. To reiterate, Gitanyow requests to be engaged on the PRGT cumulative effects assessment from the earliest stages.

Furthermore, Gitanyow stated in its February letter that Gitanyow and other First Nations participating in the Skeena Sustainability Assessment Forum ("SSAF") have developed key data and environmental threshold outputs relevant to cumulative effects assessment in the PRGT project area, and that lack of inclusion of this data in a PRGT cumulative effects assessment is a significant oversight. I have personally confirmed through my role with the SSAF that, as of June 5, 2024, the SSAF still has received no contact regarding a cumulative effects assessment of PRGT.

In its February 28 letter, BCER responded that: "The BCER acknowledges your expectation that we include the SSAF's recommended thresholds to cumulative impacts as a result of the PRGT Project. Should PRGT provide their six months advance notice to the BCER, the BCER will include this important information in its assessment" (p. 4). For clarity, Gitanyow expects to be actively involved in integration of SSAF data and thresholds into the cumulative effects assessment of PRGT, given Gitanyow's role in the development of such data and thresholds.

The cumulative effects conditions have not been satisfied

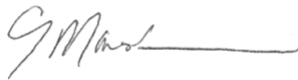
Gitanyow has received no communications nor any engagement from BCER (or PRGT) regarding developing information requirements or otherwise carrying out the required pre-construction cumulative effects assessment. Gitanyow is troubled that the BCER has made no communication to Gitanyow regarding the proponent's apparent intention to proceed to construction in August.

A cumulative effects assessment of the PRGT project as a whole must be completed by BCER, in consultation with Gitanyow (and other First Nations), prior to any project construction. Commencement of PRGT project construction in August, without this requirement having been met, would breach conditions 4-5 of the relevant BCER permits.

Response requested

Gitanyow requests that, in addition to addressing the specific questions posed above, the BCER explain its intended approach to the cumulative effects assessment for the PRGT project and provide its position in response to Gitanyow's understanding and expectations regarding the cumulative effects assessment permit requirements.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tara Marsden', followed by a horizontal line.

Tara Marsden/Naxginkw
Wilp Sustainability Director

Cc: Glen Williams, Chief Negotiator
Joel Starlund, Executive Director