

February 28, 2024

Gitanyow Hereditary Chiefs  
 PO Box 148  
 Kitwanga, BC V0J 2A0

Re: Prince Rupert Gas Transmission Ltd (PRGT), Pipeline Permit Conditions, GHC February 9, 2024 Letter

Dear President & Chief Negotiator Simogyet Malii, Glen Williams,

Thank you for your letter (Letter), dated February 9, 2024, including questions and comments shared on behalf of the Gitanyow Hereditary Chiefs (GHC).

In your Letter you shared with the BCER, seeking to understand 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”). Please reference the table below that identifies the corresponding permit number to the section and/or activity for each, as well as identifying which ones pass through Gitanyow traditional territory.

<b>Permit File Number</b>	<b>Primary Project Permits</b>	<b>Overlap Traditional Territory</b>
9708456	Pipeline, Section 1	No
9708458	Pipeline, Section 2	No
9708459	Pipeline, Section 3	No
9708460	Pipeline, Section 4	No
9708461 <sup>1</sup>	Pipeline, Section 5	Yes
9708462	Pipeline, Section 6	No
9708463	Pipeline, Section 7	No
9708510	Compressor, Johnson Creek	No
9708511	Compressor, Middle River	No
9708512	Compressor, Bordon Lake	Yes
9708513	Facility Meter Station	No

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

You asked what the activities are defined under the term “construction” sharing that 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).

To clarify, “construction”, as defined in the Permits:

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

<sup>1</sup> Pipeline Section 26 Amendment – Section 5 currently referred February 9, 2024. This amendment is administrative only and there are no proposed construction changes to that what has been approved; this amendment to the Permit will allow separate the permitted section of pipeline into three different sections of permitted pipeline to help the BCER better administer its permit requirements should PRGT propose to re-route their unconstructed pipeline right of way.

The activities that are captured in the phrase “any other activities” in the definition of “construction” in the Permits may include equipment mobilization and temporary storage of construction materials within the approved Pipeline Right-Of-Way (RoW) and workspaces. Activities approved under the other project permits are further discussed below.

Where the term “construction” is used in a permit, it applies exclusively to the activity approved in that individual permit and is not applicable to activities such as investigative use, roads or water authorizations; these require additional permitting under separate authorizations which would have to be submitted to the BCER from PRGT and go through the application review and First Nation Consultation processes as appropriate.

## **2. Confirmation of final investment decision for LNG facility**

In your Letter, you asked the BCER to please explain Condition 6, subsequently Condition 7 and 8 as they apply to the BCER Primary Pipeline Permit, File # 9708461. As of September 21, 2023, Condition 6 was replaced with Condition 7 and 8 with the intent to prescribe the Permit Holder to further engage with the impacted First Nation(s) and consider any relevant information made available and investigate the potential effects of the operation of the pipeline on the First Nation(s) current use of land and resources for traditional purposes. 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 further enhanced the intent of Condition 6 by prescribing the Permit Holder to still submit a report to the BCER encompassing a site-specific mitigation plan, a summary of engagements specific to any routing and relevant information pertaining to specific studies and or surveys. The intent of these conditions also 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.

## **3. Who is an “impacted First Nation”?**

In your Letter, you asked the BCER to please explain 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.

An “impacted First Nation”, as referenced in the permit conditions is defined by the BCER as any First Nation whose Traditional Territory is overlapped by a proposed energy resource activity and/or approved/existing energy resource infrastructure (ex. construction corridors, pipeline RoW’s, project footprints). The BCER identifies potential First Nation’s by means of the referencing the Provinces Consultative Area Databases (CAD) and other methods based on the location of a project area to determine the existence of any treaties; publicly known assertions; litigation files; court decisions; “statement of intent” areas in the BC treaty process; traditional use studies; and information or correspondence previously provided to government.

This explanation also applies to your subsequential comment under item 4. Cumulative effects assessment from your February 9, 2024, Letter where you sought clarity for identifying “impacted Indigenous nations” referenced in Condition 4 of the permits 9708461 and 9708512.

Your Letter also asked the BCER to please explain 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”.

Of the eleven Permits referenced in your Letter, two permits authorize activities within your Traditional Territory. BCER File Numbers, as referenced above, identify 9708461 and 9708512 as the permits for which the BCER has identified Gitanyow as being an impacted First Nation.

Your Letter also asked the BCER to please explain 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.

The BCER is committed to continuing our practices of engaging in ongoing discussions, information sharing, consultation and engagement with First Nations from the early stages of project proposals, throughout the project review process, and throughout the regulatory life cycle. The BCER promotes and can facilitate early and open communication between First Nations and project proponents while maintaining open communication and transparency to ensure that discussions with First Nations inform the decision-making process and that communities are kept informed throughout. Permit Holders also benefit when adopting a similar approach from early and ongoing engagement with the communities they plan on or currently operate in.

Should the GHC’s wish to share information with PRGT regarding how the activities approved in the nine remaining PRGT Permits may impact your ability to exercise Aboriginal Interests within your Traditional Territory, please share them when PRGT initiates their engagement with you as they are prescribed to do within six months of initiating construction. The BCER encourages a positive working relationship between First Nation’s and Permit Holders. In turn, the BCER is open to continuing discussions with you on any comments Gitanyow may share that relate to energy resource activities to better understand how those activities might impact Gitanyow’s exercise of their Aboriginal Interests.

Further, the BCER can confirm that Gitanyow will be provided with the report referenced in Condition 8, based on engagement with Gitanyow as described in Condition 7 as referenced in permits 9708461 and 9708512, at least six months before construction is commenced on *any portion* of the project permitted within Gitanyow’s Traditional Territory.

#### **4. Cumulative effects assessment**

In your Letter you asked for an explanation to the scope and timeline of consultation with an “impacted Indigenous nation” in the cumulative effects assessment; the BCER has addressed how an Indigenous is assessed as being impacted above. 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. An important aspect of assessing cumulative effects is the consultation process as well as

the ongoing engagement efforts made by Permit Holders. For reference, as part of PRGT's application for their Environmental Assessment (EA) Certificate, PRGT had assessed potential Project-related environmental, social, economic, health and heritage effects, identifying mitigation measures and actions to minimize or avoid potential adverse effects during mechanical construction of the Project for the purposes of providing a plan for monitoring and reporting on the effectiveness of the socio-economic mitigation measures proposed to be implemented by PRGT. As part of the assessment, PRGT identified social and economic factors that could be affected during construction and identified mitigation measures and actions that would be taken to minimize or avoid these potential effects.

The BCER is aware that PRGT has committed to continuing engagement with the identified Indigenous Nations, during construction and operation of the project and will provide project updates and project information to the public when it becomes available. 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.

Thank you for sharing that 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.

The BCER recognizes the importance of having key data developed and environmental threshold outputs relevant to cumulative effects assessments in the PRGT project area. In consideration of the conditions noted above, there is opportunity to share this information directly with PRGT with the intent of helping to further identify and manage cumulative effects consistently as the Project has not yet progressed to a construction phase. 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.

## **5. Implementation and expiry of the ancillary permits**

Your Letter also requested to seek the status of the work authorized under the ancillary permits and corresponding expiry dates for each. There were a total of 200 other project permits issued by the BCER for the PRGT Project enabling PRGT to initiate construction or approved activities within 2 years of the issuance of the each permit. PRGT has not yet initiated construction nor any approved activities and that means the other project permits, not including the eleven primary Project permits, issued more than two years from today have yet to be initiated and are expired. Should PRGT still require these once permitted activities, they will need to re-apply to the BCER, at which time the BCER will consult with Gitanyow as appropriate.

## **6. Requesting improved engagement**

The BCER apologizes for not being able to grant additional time for Gitanyow's review of past PRGT permit extension applications for those two Permits that include activities within Gitanyow's Traditional Territory. As explained, the BCER is obligated to make a decision on permit extension applications before the currently valid permit expires. In the future, to allow for more time for Gitanyow's review and to share their comments, the BCER has asked PRGT to submit any future permit extension applications earlier in advance of the corresponding permit expiry dates.

The BCER acknowledges the request for a more meaningful engagement process that considers review timelines and other engagement and consultation processes that can be more supportive of an appropriate government-to-government interaction. The BCER is open to continuing this broader conversation with you.

Should you have any comments, questions, or concerns regarding the above information please contact me directly at [Ryan.Stark@bc-er.ca](mailto:Ryan.Stark@bc-er.ca) or at (250) 794-5287.

Respectfully,



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