



GITANYOW HEREDITARY CHIEFS

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May 14, 2024

Minister George Heyman
Ministry of Environment and Climate Change Strategy
Via Email Only: ENV.minister@gov.bc.ca

Minister Josie Osborne
Ministry of Energy, Mines, and Low Carbon Innovation
Via Email Only: EMLI.minister@gov.bc.ca

Dear Minister Heyman and Minister Osborne,

RE: Prince Rupert Gas Transmission Project

I write on behalf of the Gitanyow Hereditary Chiefs with respect to the Prince Rupert Gas Transmission Project (“PRGT”), to seek clarity and confirmation from the Province on several issues.

While some of the questions below likely require input from provincial staff, we send this letter at a Ministerial level both to emphasize the importance of government-to-government consultation on any future regulatory path for PRGT and to consolidate communications that intersect the responsibilities of your respective ministries.

Context: Lack of information from PRGT proponent on intended regulatory path

As you know, PRGT’s provincial environmental assessment certificate (“EAC”) expires on November 25, 2024. To Gitanyow’s knowledge, the PRGT proponent has only three options to proceed with a project in light of this pending expiry: (1) obtain an additional EAC extension for PRGT, which would also require obtaining exemption from the prohibition on such an extension under *Environmental Assessment Act* section 31(4)(a); (2) obtain a substantial start determination for PRGT; or (3) commence a new provincial environmental assessment for a new project.

Since August 2023, Gitanyow has been repeatedly requesting that the PRGT proponent provide a clear response about the regulatory path it proposes to take with respect to the EAC expiry date and the three options above. Gitanyow is concerned that the proponent has consistently declined to provide a direct answer or any clear information about its intended regulatory path, maintaining that

PRGT is still considering all its regulatory options. Yet the proponent recently applied to the BC Energy Regulator (“BCER”) to extend the permit for PRGT’s Borden Lake Compressor Station in a manner premised upon obtaining an additional extension to the EAC.¹ Gitanyow recently raised this discrepancy with the PRGT proponent and again sought clarification, however the proponent simply repeated its position that all avenues to preserve regulatory certainty are under consideration.

In light of the swiftly-approaching PRGT EAC expiry, and the serious difficulty Gitanyow has experienced in obtaining clear information from the proponent about its regulatory intentions, Gitanyow writes to seek clarity and confirmation from the Province on the following matters.

1) PRGT’s future regulatory path

Gitanyow requests confirmation from the Province on the questions below:

- a) Does the Province share Gitanyow’s understanding that the three provincial regulatory paths summarized above are the only options available to the PRGT proponent to proceed with a project in light of the pending EAC expiry?
- b) Please confirm that the Province has not received a request or other indication from the PRGT proponent (beyond the Borden Lake Compressor Station permit extension request noted above) that the proponent is seeking or will seek
 - i) a further extension to the PRGT EAC, or
 - ii) a substantial start determination for PRGT.
- c) Please confirm that the Province will promptly contact Gitanyow if the Province receives a request from the proponent to further extend the PRGT EAC or obtain a PRGT substantial start determination, in order to commence consultation on the request.
- d) Can the Province confirm its expectation that the PRGT proponent would need to successfully obtain an additional EAC extension or a substantial start determination *before* the EAC expiry date of November 25, 2024, in order to avoid expiry of the EAC?

2) Existing PRGT permits

Gitanyow requests clarification on the following points regarding PRGT’s existing BCER permits:

- a) In a letter to Gitanyow dated February 28, 2024, the BCER stated that the condition in PRGT’s pipeline permit in the Gitanyow Lax’yip requiring confirmation of a positive final investment

¹ Gitanyow acknowledges the BCER’s April 5, 2024 email confirming that the BCER is not considering an extension of the Borden Lake compressor station permit for a term extending beyond PRGT’s EAC expiry date.

decision (“FID”) in a downstream LNG facility prior to pipeline construction had been “replaced” as of September 2023 (p. 2). Yet, on the same day, the PRGT proponent stated to the Canada Energy Regulator: “Currently the BCER permits include conditions requiring PRGT to notify the BCER of FID prior to initiating construction on each permit.”² These two statements appear to be contradictory. Please clarify: is there a requirement to notify the BCER of a positive FID prior to initiating construction on any BCER permit for PRGT? If so, please clarify the nature and scope of the requirement.

- b) Has the proponent submitted to the BCER sufficient information/reports to enable commencement of construction under *any* BCER permits for PRGT (not just those permits in Gitanyow Lax’yip)? If so, please provide further details including the date(s) upon which construction may be commenced according to the BCER permit. In its February 28, 2024 letter, the BCER stated that “PRGT has not yet initiated construction nor any approved activities” on the project (p. 4), and further confirmed that Gitanyow would be provided with a report “at least six months before construction is commenced on *any portion* of the project permitted within Gitanyow’s Traditional Territory” (p. 3, italics original, underline added). The BCER correctly noted that no such report has been provided to Gitanyow. Gitanyow wishes to understand whether a similar report has been provided to BCER with respect to any portion of the project as a whole, under any other BCER permits for the project. This is relevant because it affects whether the proponent may attempt to commence a substantial start on PRGT. If the various BCER permits each require six months’ notice prior to PRGT construction, and no such notice has been provided with respect to any permit, then it is effectively too late to commence a substantial start (or will be very shortly) and Gitanyow need not continue to seek information from the PRGT proponent about this particular regulatory path.

Government-to-government consultation required for any future PRGT regulatory path

The project agreement between the PRGT proponent and Gitanyow has not been updated since its original execution, which has been mutually recognized as an important issue in discussion between the two parties.

Relevant new developments over the more than nine years since Gitanyow entered into an agreement with the PRGT proponent include:

- the expiry in 2019 of the EAC for the PRGT pipeline terminus, Pacific Northwest LNG;
- initial proponent proposals, without approvals having yet been obtained, for significant changes to PRGT including an entirely new terminus and altered pipeline route;
- the approaching expiry of the PRGT EAC;

² TC Energy letter to Canada Energy Regulator (February 28, 2024), online: https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/130635/4437881/C28538-1_PRGT_-_Comment_Process_Letter_Response_-_A8W5G4.pdf?nodeid=4438444&vernum=-2, p. 2 footnote 7.

- enactment of a new *Environmental Assessment Act* intended to strengthen the provincial assessment process;
- legislative affirmation of the application of the United Nations Declaration on the Rights of Indigenous Peoples at a provincial and federal level;
- Gitanyow's implementation of the Wilp Sustainability Assessment Process to assess projects according to the ayookxw (Gitanyow law);
- increasingly severe and persistent climate change impacts in Gitanyow Lax'yip and globally, such as increasing drought and wildfire; and
- serious and repeated violations of the EAC for the Coastal GasLink LNG Pipeline, as well as militarized Crown suppression of Wet'suwet'en leadership and members in relation to its construction.

In this context, Gitanyow emphasizes that government-to-government consultation between the Province and Gitanyow is required on any new regulatory path for PRGT, in particular given the expiring EAC and a common acknowledgement that the PRGT agreement has not been updated with respect to changes in the project and circumstances over time.

We look forward to your response to the questions posed in this letter. Please copy all correspondence to Tara Marsden at Tara.Marsden@gitanyowchiefs.com

Sincerely,



Glen Williams
President & Chief Negotiator

Cc: Elenore Arend, BCEAO
Ryan Stark, BCER