

**Pacific Northern Gas Ltd. (PNG) Certificate of Public Convenience and Necessity (CPCN)
for the Western Transmission Gas System Reactivation and Recommissioning Project
Application and Deferral Account Increase Application**

**Coast Tsimshian and Metlakatla – Intervenors
(hereinafter also referred to collectively as “Coast Tsimshian”)**

INFORMATION REQUEST NO. 1 TO PACIFIC NORTHERN GAS LTD.

May 20, 2021

A. IMPACTS TO RIGHTS AND TITLE

Reference: Consultation and assessment of aboriginal rights and title

Exhibit B-1, section 8.4, pg 165-169

The Crown may have a constitutional obligation to consult and if necessary accommodate First Nations for impacts to aboriginal rights and title. This is a legacy pipeline for which the duty to consult and accommodate was not met.

In its Application (at pg. 169) PNG says that it has ‘engaged’ with indigenous communities whose territories overlap the footprint of the project”

- 1.1 Please indicate at what points the impacts of the Project on Lax Kw’alaams and Metlakatla (hereinafter “Coast Tsimshian”) rights and title have been or will be assessed.
- 1.2 Has PNG assessed Coast Tsimshian strength of claim to aboriginal rights in the area of the proposed pipeline reactivation and recommissioning project?
- 1.3 Has PNG assessed Coast Tsimshian strength of claim to aboriginal title in the area of the proposed pipeline reactivation and recommissioning project?
- 1.4 If so, what determinations has PNG made about Coast Tsimshian asserted Aboriginal rights and title and what is PNG’s assessment of Coast Tsimshian strength of claim in relation to Aboriginal title and rights in the Project area?

- 1.5 Please provide copies of any strength of claim assessments PNG has done in respect of the Coast Tsimshian and copies of any documents supporting or relating to such assessments.
- 1.6 Please provide a list of all materials there were consulted in arriving at the assessment of the depth of consultation that PNG considers appropriate for the Nation together with copies of all material on which that assessment is based.
- 1.7 What methodology is being used by PNG to assess potential adverse impacts to Coast Tsimshian aboriginal rights and/or title from the proposed pipeline reactivation and recommissioning project?
- 1.8 What is PNG's assessment of potential adverse impacts to Coast Tsimshian rights and interests from the proposed reactivation and recommissioning, including economic; employment; community services and infrastructure; individual family and community well-being; human health; traditional culture; rights to fish, hunt and gather; visual and aesthetic resources; and species and habitats required for the exercise of activities listed above?
- 1.9 Has PNG been delegated any procedural aspects of consultation? If so, please provide details on the extent of that delegation and at what point that delegation took place.
- 1.10 How has Coast Tsimshian community and traditional knowledge been incorporated into proposed reactivation and recommissioning project?
- 1.11 What information and professional knowledge has PNG used to determine the nature and scope of Coast Tsimshian Aboriginal rights and/or Aboriginal title in the Project area?
- 1.12 What information and professional knowledge were used to identify and understand potential effects of the project on Coast Tsimshian traditional lands, waters, resources and activities and in providing mitigation recommendations for those effects?
- 1.13 What information and professional knowledge were used to identify and understand potential effects of the project on Coast Tsimshian reserve lands and Coast Tsimshian use thereof and in providing mitigation recommendations for those effects?

- 1.14 Please identify and explain the methodology being used by PNG to assess potential adverse impacts to Coast Tsimshian from the proposed pipeline reactivation and recommissioning project, and what specific measures PNG has taken in relation to Coast Tsimshian Aboriginal rights to avoid, mitigate, or accommodate Coast Tsimshian rights to hunt, fish, trap, gather and carry on traditional modes of life including but not limited to spiritual and cultural activities and practices and traditional teachings.
- 1.15 There are Coast Tsimshian traplines in the Prudhomme Lake to Work Channel area. What efforts have PNG made to engage with trapline holders, and to understand the impacts of increased access and construction activities on hunting and trapping rights?
- 1.16 There is an important historic grease trail through the Lachmach valley between Work Channel and the mouth of the Khyex River. What efforts has PNG made to work with the Coast Tsimshian to protect those lands from construction and access impacts?

At page 168, PNG states that “PNG considers that there are no substantive outstanding issues or concerns related to engagement with Indigenous communities at the time of application.” It also states “PNG has ensured that all Indigenous communities were notified of the Project and were provided an opportunity to meet with PNG to discuss the Project and their interests and concerns.

- 1.17 Please advise on what basis does PNG state that there are no substantive outstanding issues or concerns from Lax Kw’alaams? What efforts have PNG made to identify those concerns? Please provide any letters or other documentary evidence received from Lax Kw’alaams that it relies upon to support this statement.
- 1.18 Please advise on what basis does PNG state that there are no substantive outstanding issues or concerns from Metlakatla? What efforts have PNG made to identify those concerns? Please provide any letters or other documentary evidence received from Metlakatla that it relies upon to support this statement.
- 1.19 Does PNG consider that providing “an opportunity to meet with PNG to discuss the Project and their interests and concerns” satisfies the duty to consult and accommodate, or justifies the statement that ‘there are no substantive outstanding issues or concerns’.

- 1.20 Has PNG ever formally asked Lax Kw'alaams or Metlakatla whether they support the project or not?
- 1.21 Please indicate whether PNG will be seeking the free, prior and informed consent of the Nation required by UNDRIP prior to proceeding with the Project.
- 1.22 S. 8.4.2 at page 166-7 lists a number of specific bullet points. Please provide details for each meeting held specifically with Lax Kw'alaams and Metlakatla outlining the questions and concerns raised by their attendees?
- 1.23 Please provide further detail in respect of the bullet point (at pg. 166) listing "Community and customer benefits – economic, employment and training" in respect of the meeting or meetings with each of Lax Kw'alaams and Metlakatla. Specifically, what specific benefits for each of "economic", "employment" and "training" were offered?
- 1.24 Please confirm that PNG was advised by Lax Kw'alaams at their meeting that they did not speak for their leadership and did not consider the meeting to be consultation. Please provide the list of attendees and their positions.
- 1.25 Please confirm that PNG was advised by Metlakatla at their meeting that they did not speak for their leadership and did not consider the meeting to be consultation. Please provide the list of attendees and their positions.
- 1.26 What does PNG propose to do where one or both Coast Tsimshian bands opposes this Application or the new LNG projects that it is proposed to service?

2.0 RESERVES

The proposed recommissioned and reactivation of the pipeline for commercial purposes will traverse four Reserves in which the Coast Tsimshian are beneficial owners.

- 2.1 Has PNG made any application to the Governor in Council or the Minister of Indian Affairs pursuant to s. 35 of the Indian Act seeking authorization to approve a right of way or other interest in the Indian Reserves the pipeline occupies: Lax Kw'alaams IR 75 (Gitandoiks), IR 74 (Dzagayap), IR 72 (Kasika) and IR No.8

(Khyex), for the purposes of constructing, maintaining or operating the recommissioned pipeline through the Reserve? Has PNG got proper authority for the roads through Coast Tsimshian Indian Reserves? If so, produce those authorizations.

2.2 Does PNG have any plans to make such applications? If not, why not?

2.3 Will PNG reroute its pipeline around IR No 8, 72, 74 and 75 if Coast Tsimshian do not consent to the altered use of their Reserves to construct, recommission and reactivate its pipeline? Does PNG commit that it will only recommission and reactivate its new commercial pipeline through those Reserves if Coast Tsimshian provides it consent to the use of its reserve land for the newly recommissioned and reactivated pipeline?

3.0 ACCOMMODATION COSTS

PNG has identified a budget for all anticipated costs including land acquisitions. It has not identified any reserve or expectation of potential economic accommodation for impacted First Nations

3.1 Is PNG willing to offer economic accommodation or payments in lieu of mitigation for the impacts to Coast Tsimshian aboriginal rights and title. If not, why not?

3.2 Why is there no budget provided for the costs of appropriate accommodation?

3.3 Please indicate any accommodation measures for the Project in respect of the Nation that have been considered by PNG to date and please indicate any role that PNG will play in accommodating Lax Kw'alaams.

3.4 How will the multigenerational impact of the proposed Project on the Nation be assessed – including the right to benefit economically from its Indigenous Territory as the Supreme Court of Canada described in 2014 SCC 44?

There have been a number of pipelines proposed in the last decade in the same general vicinity to bring natural gas to the Coast for LNG purposes, each of which has been subject to Impact

Benefit Agreements with the First Nations whose lands they traverse (including one from PNG itself) which provide for economic accommodation as a legitimate cost of doing business.

3.5 What efforts have PNG made to enter into impact benefits agreements with First Nations along the pipeline route?

3.6 Does PNG accept that impact benefits agreements offering economic accommodation are an accepted part of the process for pipelines or other linear developments in BC? If so, why has PNG not considered this aspect in their planning and in their budgeting for this project?

4.0 NEW LNG PROJECTS

Reference: Consultation and Accommodation for new LNG Projects

This Application seeks approval for Interconnection Agreements and Transportation Service Agreements to provide service to three new facilities – Skeena LNG at Terrace, Port Edward LNG at Port Edward and Totem LNG in Prince Rupert. Each of these projects are in the aboriginal title territories of the Coast Tsimshian and cannot occur without the increase capacity from this Project. Each of those projects will give rise to a duty to accommodate First Nations for impacts to aboriginal rights and title.

Exhibit B-1, Application

4.1 Did PNG make any efforts to consult with or engage Coast Tsimshian in respect of the proposed new LNG projects prior to entering into Transportation Service Agreements or determining the successful project applicants? If so, please describe and document those engagement activities. If not, why not?

4.2 Has PNG made any efforts to consult with or engage Coast Tsimshian in respect of the proposed new LNG projects since determining the successful applicants? Describe those efforts. If not, why not?

The Application identifies the requirement for ‘strong support by local indigenous first nations would be required for the route’ Exhibit B-1, Application 4.5.4.3.1, pg 61

- 4.3 What efforts have you made to determine the support of Coast Tsimshian to the Top Speed project in Prince Rupert and the proposed route.
- 4.4 What plans do you have if the Coast Tsimshian actively oppose the Top Speed project or its route?
- 4.5 What contingency planning do you have in place should you become aware that the Coast Tsimshian will oppose any of the three new projects in their territory?

5.0 SOCIAL, CULTURAL AND ECONOMIC IMPACTS AFFECTING COAST TSIMSHIAN RIGHTS AND INTERESTS

- 5.1 Given that the proposed project will traverse Coast Tsimshian lands without their consent. What other options have been considered? If other options were considered, please provide evidence of reactivation and recommissioning alternatives and locations proposed, discussed, considered, and studied and the rationale as to why these alternative locations were not selected.
- 5.2 What criteria and factors were used to assess these options, and which of those alternatives has the lowest cumulative social, economic and environmental risk and impact. What role did the lack of First Nations consent play in the evaluations.
- 5.3 Please provide information regarding opportunities for Coast Tsimshian to participate in the establishment of permanent environmental monitoring in the event that the proposed recommissioning and reactivation is approved.
- 5.4 Please indicate how PNG plans to assess the cumulative effects of upstream and downstream activities, particularly in light of the intensive industrial development already taking place within our territory including increased marine shipping traffic and the effect of ancillary infrastructure, related to the pipeline reactivation and recommissioning project.
- 5.5 Please describe the approach PNG will take to update the holders of Aboriginal rights of changes to the project.

6.0 SAFETY & ENVIRONMENT

- 6.1 Please provide a discussion of the potential effects resulting from pipeline recommissioning on all SARA Schedule 1-listed species found along each of the route through Coast Tsimshian territory including IR No 8, 72, 74 and 75 including a summary of the mitigation measures that PNG will implement during construction and operation to limit the risks and adverse effects on SARA listed species
- 6.2 Please provide a summary of all critical habitat areas identified in Coast Tsimshian traditional territory as well as on Coast Tsimshian reserve lands that may be impacted by construction/recommissioning and/or operation and reactivation of the pipeline.
- 6.3 Please advise whether the repair and maintenance activities in the Salvus to Galloway project in combination with this Reactivation and Recommissioning Project will extend the useful life of the pipeline, and by how much?
- 6.4 Please provide the steps and procedures that PNG, and its successors, would take to decommission the pipeline?
- 6.5 Please indicate whether PNG, and its successors, would make an application for abandonment as part of the decommissioning process?
- 6.6 Please describe how any damage to roads due to construction activities will be identified, repaired, or compensated for. This should include damage that is not immediately evident at the completion of construction, such as settlement over the pipeline that may occur over a period of several years.
- 6.7 To what extent do any Emergency Response Plans for accidents or malfunctions of the project engage Coast Tsimshian or other Indigenous peoples? If not, why not?
- 6.8 Please provide information as to the capability of PNG to provide for the impact of the failure of its pipeline or any of the three new LNG projects during a large seismic event.
- 6.9 Please indicate whether PNG, and its successors, will commit at this time to fully remediating the area of the existing delivery line, including remediation of sub-surface

utilities, assets, infrastructure, sediments, soils, other earthen materials, plants and wildlife?

If not, please explain PNG' s rational for refusing to do so.