

November 1, 2024

Attn:

Melissa Bard

Crown Consultation Coordinator / Coordonnateur des consultations de la Couronne

Suite 210, 517 Tenth Avenue SW

Calgary, AB, T2R 0A8

Subject: Peters First Nation supplemental comments regarding preliminary List of Issues, and potential process steps and timing

Dear Ms. Bard,

On October 3, 2024 Peters First Nation (“Peters”; “PFN”) submitted a letter to the Commission ([C31583](#)) to provide support for the completeness of the Application and Environmental and Socio-economic Assessment submitted by Westcoast Energy. In this submission, it is also noted that PFN has been actively engaging with Westcoast on this Project since 2023, including participation in environmental field studies and the undertaking of a Traditional Land Use Study to inform the Project Application of PFN’s rights, interests, values, and concerns in the Project area.

This letter was submitted in response to the letter received on September 13, 2024 ([C31328-1](#)), from the Canada Energy Regulator requesting comments from intervenors regarding the preliminary List of Issues and potential process steps and timing, including whether the Commission of the Canada Energy Regulator (“the CER”; “the Commission”) should consider comments on the completeness of the application before making a completeness determination. As a follow up to PFN’s October 3rd submission, we are providing this additional letter focused on our perspectives regarding the List of Issues and the Potential Hearing Process Design, Steps, and Timing.

3.1 PRELIMINARY LIST OF ISSUES

1. Should an issue be added to address a topic of interest that is not currently covered?

In addition to the amendments recommended below, the List of Issues should include:

- (a) The extent to which impacted Indigenous Nations will be receiving economic benefits and participation opportunities from the Project.
- (b) The impacts (including cumulative impacts) of the Project on health and safety (physically, culturally and socially) on Indigenous Peoples, including with respect to the intersection of sex and gender with other identity factors.
- (c) The extent to which Indigenous Nations will participate in emergency response planning and management.
- (d) The extent to which Indigenous Nations will participate in and advise on the reclamation and restoration practices, policies, and priorities along the pipeline right-of-way from post-construction all the way to decommissioning and post-closure.
- (e) The consideration of Articles 11(1), 11(2), 24(1), 24(2), 25, 26(1), 29(1), 29(3), and 31(1) of the United Nations Declaration on the Rights of Indigenous Peoples, specifically regarding the continuation of traditional cultural practices by First Nations within their territory and land-base.

2. Should an issue be amended to cover a perceived gap or to increase clarity?

The following issues require amendment to address potential gaps and provide greater clarity:

Issue #	Current language	Updated language
3	The health, social, and economic effects of the Project, including any cumulative effects, including with respect to the intersection of sex and gender with other identity factors	The health, social, and economic effects of the Project, including any cumulative effects and effects on Indigenous Peoples , including with respect to the intersection of sex and gender with other identity factors
4	The interests and concerns of the Indigenous Peoples of Canada, including with respect to their current use of lands and resources for traditional purposes	The interests and concerns of the Indigenous Peoples of Canada, including with respect to their current or intended use of lands and resources whether for traditional purposes, economic development, or other purposes
5	The effects of the Project, including any cumulative effects, on the rights of the Indigenous Peoples of Canada recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i>	The effects of the Project, including any cumulative effects, on the rights of the Indigenous Peoples of Canada recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i> and for greater certainty, the extent to which the cumulative effects of the Project and all other industrial development have materially diminished or will materially diminish the ability of Indigenous Peoples from exercising their rights recognized and affirmed by section 35 of the Constitution Act, 1982
9	The financial resources, financial responsibility, and financial structure of Westcoast; the methods of financing the Project; and the extent to which Canadians, including Indigenous Peoples of Canada, will have an opportunity to participate in financing, engineering, and constructing the Project	The financial resources, financial responsibility, and financial structure of Westcoast; the methods of financing the Project; and the extent to which Canadians, including Indigenous Peoples of Canada, will have an opportunity to participate in financing (including economic reconciliation equity and/or resource royalty payments), engineering, contracting, procurement , and constructing the Project
10	The extent to which the effects of the Project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change	The extent to which the effects of the Project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change and greenhouse gas emission reduction targets.
15	The appropriateness of the Project's general route and land requirements for the Project, including lands in a reserve referred to in section 317 of the CER Act	The appropriateness of the Project's general route and land requirements for the Project, including lands in a reserve referred to in section 317 of the CER Act and lands that may intersect with potential cultural heritage and archaeological sites and resources.

Issue #	Current language	Updated language
18	The effects of accidents and malfunctions that may occur in connection with the Project	The effects, liability, and accountability measures in the event of accidents and malfunctions that may occur in connection with the Project
19	Mitigation measures for addressing the Project's effects	Mitigation measures, including potential offsetting, economic and other accommodation measures to Indigenous Peoples for addressing the Project's effects

3. Should an issue be removed because it is irrelevant to the Commission's consideration of the Project?

There are not any issues that should be removed from the List of Issues.

3.2 POTENTIAL PROCESS STEPS AND TIMELINE

1. How can the Commission's process, including holding oral Indigenous knowledge sessions, be more culturally inclusive and inviting to Indigenous Peoples?

The CER and CCC must work collaboratively with intervening First Nations, including PFN, to gather an understanding of any cultural practices and protocols that must be followed when engaging and gathering any sort of Indigenous Knowledge and community perspectives. This includes but is not limited to:

- Understanding any offerings (examples: tobacco, prayer, honoraria) that must be provided when requesting knowledge or input from First Nations;
- Understanding and abiding by any cultural days, ceremonies, or celebrations for nations partaking in the hearing process; this includes ensuring that no CER deadlines occur on these dates;
- Consider locationality when selecting hearing locations. More specifically, these hearings should be held in locations along the Project route that are in close proximity to Indigenous communities along the project route rather than defaulting to all hearing activities taking place in Calgary;
- Providing the opportunity for Indigenous legal orders, decision-making processes and dispute resolution to be incorporated into the hearing process.

2. Would a targeted workshop for parties to obtain information and/or provide input about a specific topic be a valuable process step? If so, what topic(s) would be most important to address, and at what stage of the process should it be held? What would make a workshop most useful and effective (e.g., third-party facilitation, virtual and/or in-person attendance, presentations and/or roundtable discussions, having the Commission Panel and/or the CCC attend and participate in a specific manner)?

Peters First Nation is of the perspective that targeted workshops could be a beneficial procedural step, if carried out in an effective and participatory-driven manner. Given the project covers a large and diverse landscape range, it is recommended that the CER undertake workshops in a regionally focused manner. In addition, it is recommended that these workshops include sections where all parties may be present, including the Proponent and components of the session without Westcoast to allow intervenors to speak more openly with the Commission. Lastly, topics for consideration that could benefit from topic-specific workshops include:

- Mechanisms for Indigenous monitoring and oversight throughout the life of the Project if it were approved;

- Methodologies for assessing cumulative impacts, including cumulative impacts specific to the rights, title, and interests of Indigenous Peoples; and
- Practices and principles to ensure that the United Nations Declaration on the Rights of Indigenous Peoples and true reconciliation, including economic reconciliation and the continuation of traditional, cultural, and subsistence-based practices within a First Nation's land base and territory is maintained throughout the life of the Project, if approved.

3. The Commission has received suggestions and comments about the methodology used to assess Project impacts on the rights of Indigenous Peoples. While intervenors may present alternate methodologies in their evidence, question Westcoast on its methodology, and provide argument as to which methodology is most appropriate, what (if any) additional process steps may be required to ensure an appropriate methodology is used?

There are several mechanisms that could be considered for identifying the adequacy of the methodology for assessing Project impacts on the rights of Indigenous Peoples. Unfortunately, within the current regulatory framework, it is often too late to have any sort of sufficient or meaningful input in the methodology applied, and the methods applied are often restricted to a limited set of Valued Components such as only considering impacts on sites identified within the Government of B.C.'s Remote Access to Archaeological Data (RAAD) registry. At minimum, there needs to be the opportunity for intervening Indigenous Nations to review and submit Information Requests to both the Commission and Westcoast regarding the scope and methods being implemented by both parties to assess impacts on the rights of Indigenous Peoples. This hearing milestone must occur prior to the development and submission of Written Evidence in the process by intervenors.

4. In order to facilitate in-person participation (e.g., by Indigenous Peoples, other intervenors, and the public), the Commission is considering holding oral process steps in several locations in close proximity to the proposed Project. In which location(s) could the Commission hold oral steps to best achieve this goal?

As was noted in our responses to questions 1 and 2 of section 3.2, it is important to hold hearing process steps in locations within closer proximity to the Project and to the communities along the Project route, including Peters First Nation. In PFN's case, locations that could support this local participation include:

- Hope, BC
- Chilliwack, BC
- Abbotsford, BC

5. When describing its role in the EER (C29820-2), the CCC indicates that its supplemental consultation activities may include filing collaborative submissions on the public record for the proponent's and Commission's consideration (PDF page 5). The CCC further suggests that it be provided various opportunities to participate in the Commission's process (PDF page 22).

- In what process steps should the CCC participate to allow it to effectively carry out its role?
- What additional process steps (if any) would enable parties to respond to the CCC's submissions?

When contemplating the role of the CCC in the hearing process, there are two factors to consider, namely, how to ensure both that the CCC conducts a fulsome enough process to fulfill the Duty to Consult and Accommodate, while preventing consultation fatigue of the intervening Indigenous Nations, including Peters. Firstly, it is important for the process undertaken to be a nation-driven approach, secondly, the CCC needs to ensure it balances the need to be comprehensive while not being overly onerous. As a result, it is recommended that the Hearing Order and Timetable of Events that is released is inclusive of



both Commission-led and CCC sanctioned activities to ensure nations can plan resources, including both funding and human resources adequately. In addition, the CCC must outline how it will undertake the steps required to ensure the Duty to Consult is met without the requirement of a Phase 3 of consultation step given that Phase 3 is intended to be reserved for worst case scenarios where consultation has fallen short within the designated process.

Peters appreciates the opportunity to engage in this Project's regulatory and hearing process with the CER and Westcoast and looks forward to further discussing these matters to ensure PFN is engaged in the process and included in a way that respects our rights, interests, and promotes reconciliation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Diaz'.

Robert Diaz
PFN Lands Manager
pfnlands@petersfn.ca