



# *Gitga'at First Nation*

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January 7, 2013

**Secretary to the Joint Review Panel**  
Enbridge Northern Gateway Project  
444-Seventh Avenue SW  
Calgary, AB T2P 0X8

**Attention: Ms. Sheri Young, Secretary to the Joint Review Panel**

Re: Hearing Order OH4-2011 Northern Gateway Pipelines Inc. Enbridge Northern Gateway Project Application of 27 May, 2010-File OF-Fac-Oil-N304-2010-01. November 16, 2012 Request for Comment

Dear Sirs/Mesdames:

On November 16, 2012 the Panel requested comments from parties in regard to Gitxaala Nation's Notice of Constitutional Question (filing A3D413).

On December 5, 2012 Gitga'at Nation filed a Notice of Motion (A49615) requesting an extension to review and consider the panels questions before responding. In response to the Nation's request, the Panel granted Gitga'at an extension until January 7, 2013.

For present purposes, the Gitga'at Nation limits its response to the following remarks:

If it is ultimately decided that the Panel has and will exercise the jurisdiction to make a determination on the constitutionality of sections 52 and 54 of the National Energy Board Act and the issuance of a Certificate of Public Convenience and Necessity for the Northern Gateway Pipeline Project in the face of the Gitxaala First Nation's claims to Aboriginal rights, including Aboriginal title, as protected under section 35 of the *Constitution Act, 1982*, the Panel will be required to make determinations regarding not only the nature but also the geographic scope of the rights being asserted.

Any determination that the Panel might make as to existence of the Gitxaala First Nation's Aboriginal rights, including Aboriginal title, within specific geographic areas will be made in reference to the Gitxaala First Nation's larger claim area. Indeed the Gitxaala First Nation is on the record in these proceedings as holding that this larger claim area and its (purported) occupation by the Gitxaala constitute *material* facts.

The full extent of this larger claim area is depicted on the map attached as Appendix A to Gitxaala's Revised Notice of Constitutional Question (**RNCQ**, Schedule 1 attached to Submissions of Gitxaala Nation (A3D7X5)). The Gitxaala First Nation refers to this larger claim area as "Gitxaala's Traditional Territory".

First among the material facts listed in RNCQ that the Gitxaala First Nation says give rise to the constitutional question is this:

1. The Gitxaala First Nation is a distinct Aboriginal group that has occupied its Traditional Territory since time immemorial. ...

In subsequent paragraphs of the RNCQ setting out further material facts, the Gitxaala First Nation refers to this larger area variously as "its Traditional Territory" (paras. 3, 5 & 11), "Gitxaala's Traditional Territory" (paras. 4, 5) or simply "the Traditional Territory" (para. 5).

In paragraphs 10 and 11 of the RNCQ, the Gitxaala First Nation says that it is seeking the Panel's determination of the existence of its rights only within relatively small portions of its "Traditional Territory as outlined on the map attached as Appendix B or alternatively as shown on the maps attached as Appendices C, D and E.

Although the Gitga'at Nation does not anticipate that it has any dispute with the Gitxaala First Nation regarding its claim to Aboriginal rights within the specific areas outlined in the maps attached to the RNCQ as Appendices B, C, D or E, it does maintain the right to consult internally with Gitga'at elders and, if need be, adduce evidence in this regard prior to the Panel proceeding to make any determinations of Gitxaala's Aboriginal rights, including title, within these limited areas.

Furthermore, because the Gitga'at Nation disputes and rejects the Gitxaala's claim to the larger area depicted in its maps attached as Appendices A – E as exaggerated, and since the Gitxaala First Nation is putting forth its claim to this larger area as *material* to the constitutional questions it is posing, the Gitga'at First Nation expects that it will be making argument in this regard should the Panel decide to proceed to make any determinations of Gitxaala's Aboriginal rights, including title.

The Gitga'at First Nation is particularly concerned that the Panel have a full appreciation of the Gitga'at position in regard to Gitxaala's expansive territorial claims not only prior to making any determinations of Gitxaala's rights but also prior to settling on the final language it will use to express itself in this regard. For good or ill, the Gitga'at First Nation will have to live with the consequences of the Panel's choice of language for years to come.

Sincerely,

Michael Reid  
ENGP Community Consultation Coordinator, Gitga'at Nation