

December 15, 2016

Sent via email

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File No. 729

Dear Sir:

**Re: Pacific Future Energy Refinery Project, Ref. No. 80127
Addendum to the Project Description – Activities that are Incidental to the Pacific
Future Energy Refinery Project**

I write to you on behalf of our client, Douglas Channel Watch, in relation to the above referenced environmental assessment being undertaken by the Canadian Environmental Assessment Agency (the “Agency”).

As you know, on October 7, 2016, the Agency posted its Draft Environmental Impact Statement Guidelines (“Draft EIS Guidelines”) for the Pacific Future Energy Refinery Project (the “Project”) to the Registry and invited public comments. The deadline for submitting written comments on the Draft EIS Guidelines was set as November 7, 2016. Section 3.1 of the Draft EIS Guidelines set out the components of the designated project as described by the Pacific Future Energy Corporation (the “Proponent”) in its June 7, 2016 Project Description. Douglas Channel Watch submitted comments on the Draft EIS Guidelines to the Agency on November 7, 2016. Those submissions were posted to the Registry as Document #67.

At some point after November 7, 2016, two documents were posted to the Registry which relate to activities incidental to the Project. Document #73, dated September 12, 2016, is a request from the Agency to the Proponent for additional information regarding activities incidental to the Project. Document #74 (the “Addendum”), dated September 28, 2016, is the Proponent’s response and identifies export options for the refined products, Indigenous groups who may be affected, and rail infrastructure associated with the transportation of bitumen. This information was not previously posted to the Registry, nor was it available to all members of the public wishing to submit comments on the Draft EIS Guidelines.

Douglas Channel Watch submits that, by posting these documents after the deadline for submitting comments on the Draft EIS Guidelines, the Agency has undermined the public's right to provide meaningful comments on the adequacy of the Guidelines. In addition, the Agency's delay in posting this information, and the manner in which the information was posted, is contrary to the key principles of transparency and accountability in environmental assessment processes.

Public consultation

Douglas Channel Watch, as members of the public who are directly affected by the Project, had a right to comment on the Draft EIS Guidelines. However, they were unable to exercise this right in a meaningful way in the absence of several key pieces of information contained in the Proponent's Addendum.

The Addendum outlines three options for the export of refined products from the refinery. These are as follows:

- (1) a marine export terminal in Kitimat, and a 39 km pipeline to transport gasoline and diesel from the refinery to the terminal;
- (2) a marine export terminal at Nasoga Gulf, which would necessarily include a 274 km gasoline and diesel pipeline from Kitimat to the Nasoga Gulf terminal; and
- (3) rail transport to markets in Western Canada, or to the existing export terminal in British Columbia's Lower Mainland.

By contrast, the project description in section 3.1 of the Draft EIS Guidelines included only:

- (1) the marine terminal and access road for the purpose of transporting refinery modules;
- (2) a pipeline from the refinery to Kitimat for process water; and
- (3) a railroad connection to the CN Rail line.

Prior to the Addendum's release, the public was therefore unaware of the potential for either a marine terminal and pipeline for the purpose of transporting refined products to either Kitimat or Nasoga Gulf, or that the rail line between Terrace and Kitimat was within the scope of the Project. Importantly, the Agency and the Proponent agree that these export options are incidental to the proposed oil refinery, and therefore fall under the definition of "designated project" in section 2(1) of the *Canadian Environmental Assessment Act, 2012*¹ ("CEAA 2012"). They must therefore be considered as part of the Project's environmental assessment.

Had this relevant information been made publically available prior to the deadline for public comments on the Draft EIS Guidelines, it would have informed Douglas Channel Watch's submissions. As acknowledged by the Agency in its September 12, 2016 letter requesting additional information, the information in the Addendum was "[...] required to understand the full extent of the potential impacts of the Project [...]"² Douglas Channel Watch also notes that

¹ *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19 at s 2(1) ["CEAA 2012"].

² Document #73, Letter from CEAA to Mr. Jacques Benoit, dated September 12, 2016, available online: <http://www.ceaa-acee.gc.ca/050/documents-eng.cfm?evaluation=80127>.

the potential for both an export terminal at Nasoga Gulf and a pipeline connecting the refinery to the Nasoga Gulf terminal raises the possibility of adverse environmental impacts in geographic areas that would not have been directly affected by the Project as described in the Draft EIS Guidelines. Members of the public who may have wanted to submit comments but were unaware of its potential geographic scope are now excluded from doing so.

Despite the importance of the information contained in the Addendum, the document was withheld without explanation until after the deadline for public comments on the Draft EIS Guidelines. This is contrary to the purposes of CEAA 2012, which call for meaningful public participation during an environmental assessment.³ Participation cannot be meaningful if the public is not provided with adequate information.⁴

Transparency and accountability

As noted above, the documents in question were dated September 12 and September 28, 2016, respectively, but were not posted to the Registry until after the November 7, 2016 deadline for public comments on the Draft EIS Guidelines. No explanation was provided for this delay. Furthermore, the dates that appear on the Registry are the document dates, rather than the dates they were posted. This makes it more difficult for members of the public to locate the documents, as they would have to be looking specifically for retroactive postings.

The delay in posting these documents, and the manner in which they were posted, are contrary to the legitimate expectations of Douglas Channel Watch and the spirit of transparency and public accountability with which an environmental assessment must be conducted. The Agency's public participation guide states that information regarding the proposed project should be provided in a timely manner.⁵ Specifically, it states that the responsible party should "[...] provide complete and current information regarding the subject that is the focus of the specific public participation activity."⁶ Douglas Channel Watch asserts a legitimate expectation that documents pertaining to the Project Description provided by the Proponent to the Agency, particularly where relevant to a pending public consultation process, are to be posted to the Registry. The Agency's failure to make this relevant and essential information available in a timely manner significantly undermines those legitimate expectations and the integrity of the environmental assessment process.

Relief requested

Douglas Channel Watch respectfully requests a new public consultation period on the Draft EIS Guidelines. This would allow participants such as Douglas Channel Watch, who submitted comments without the benefit of the information contained in the Addendum, to add to or revise their comments in light of this information. It would also provide the opportunity to other

³ CEAA 2012, *supra* note 1 at s 4(1)(e).

⁴ Public Participation Guide, Chapter 5: Implementing Public Participation, available online: <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=46425CAF-1&offset=7&toc=show#p1-1>.

⁵ *Ibid.*

⁶ *Ibid.*

members of the public, who may not have known they could be affected by the Project, to participate in the consultation process.

Douglas Channel Watch submits that a new consultation period is necessary for the Agency to meet its public consultation obligations, and to restore transparency to the environmental assessment process.

Sincerely,
<Original signed by>

Barry Robinson
Staff Lawyer

CC: Cheryl Brown, Douglas Channel Watch