

GENPGM

March 2, 2022

Via E-Mail

Joint Review Panel
Impact Assessment Agency of Canada
160 Elgin Street, 22nd Floor
Ottawa, ON K1A 0H3

Attention: Debra Sikora
Panel Chair, Marathon Palladium
Project

Dear Ms. Sikora:

**Re: Generation PGM (“GenPGM”) Marathon Palladium Project (“Project”)
Response to Pays Plat First Nation Procedural and Confidentiality Motions**

On February 25, 2022, Pays Plat First Nation (“PPFN”) filed its written submissions for the Public Hearing regarding the Project (CIAR #[1080](#)). In its written submissions, PPFN included a procedural motion and a confidentiality motion. On February 28, 2022, the Joint Review Panel invited comments on PPFN’s procedural motion and confidentiality motion by March 3, 2022 at 5:00 pm ET (CIAR # [1089](#)). This letter is GenPGM’s response to PPFN’s motions.

1. GenPGM’s Response to PPFN’s Procedural Motion

PPFN proposes two additions to the Public Hearing Procedures: (1) that sections of the preamble to the *Impact Assessment Act*, RSC 2019, c 28, s 1 (the “IAA”) “be incorporated as an aspect of the purpose of the Panel”; and (2) that the elements from the Indigenous Traditional Knowledge section of the IAA be added to the Panel procedures.

GenPGM opposes these proposals because the *Canada Environmental Assessment Act*, RSC 2012, c 19, s 52 (“CEAA”) is the governing legislation of this Public Hearing and its procedures, not the IAA. As the Panel is aware, the timing of referral of an assessment to a review panel determines which legislation – the CEAA or the IAA – governs the review process.

The IAA provides:

Environmental assessments by former Agency under 2012 Act

181 (1) Any environmental assessment of a designated project by the former Agency commenced under the 2012 Act before the day on which this Act comes into force, in respect of which the former Agency has posted the notice of commencement under section 17 of the 2012 Act before that day, is continued under the 2012 Act as if that Act had not been repealed.

There is no discretion or optionality in the above provision to permit a review panel to alter the governing legislation. The Project was referred to an environmental assessment on October 7,

2010, as set out in the Terms of Reference. It was then extended to be assessed under the CEAA 2012, and the application of the CEAA 2012 was confirmed in 2019 after the introduction of the IAA (CIAR#[690](#) and [691](#)). It is therefore designated under the IAA to continue as a CEAA 2012 review “as if that Act had not been repealed”. Accordingly, the proposed sections of the IAA should not be incorporated or added into the purpose of the Panel or the Panel procedures. The legislation provides no authority for granting these proposals.

Further, participants were already given the opportunity to comment on the draft Hearing Procedures provided by the Panel five months ago. Specifically, on September 23, 2021, the Panel invited the public to review and comment on the draft Public Hearing Procedures (CIAR [934](#)). Feedback and comments were considered, and the Public Hearing Procedures were subsequently finalized on December 7, 2021 (CIAR [956](#)). The time to make comments and recommendations like those set out in PPFN’s procedural motion has passed. Any such comments should have properly been submitted to the Panel in the manner prescribed in the September 23, 2021 invitation. It would be unfair to GenPGM and other participants to change the Public Hearing Procedures within weeks of the start of the hearing. Further, any application of IAA standards that are beyond the scope of the assessment submitted by GenPGM would raise issues of procedural fairness.

2. Gen PGM’s Response to PPFN’s Confidentiality Motion

In its written submissions, PPFN further requests that its report titled “Pays Plat First Nation’s Presence on Angler Creek – A Historic Summary” (the “**Angler Creek Summary**”) be kept confidential pursuant to Section 2 of the Final Procedures for Requesting Confidentiality (CIAR [212](#)). GenPGM does not object to this request, subject to GenPGM being permitted to view the Angler Creek Summary by way of a confidentiality undertaking and having the opportunity to respond, as may be needed and/or appropriate.

Similar undertakings were used to facilitate the review of the Biigtigong Nishnaabeg First Nation’s (“**BN**”) technical review submission in October 2021 (see CIAR [920](#)). That confidentiality undertaking required that any materials provided by BN regarding its technical review would remain confidential and that, in its final report, “the Panel would describe how any confidential information has been considered and used in its conclusions and recommendations.” GenPGM requests that a similar confidentiality undertaking be in place to facilitate its review of the Angler Creek Summary. GenPGM further requests that it have at least two weeks to respond confidentially to any confidential filing.

For the reasons set out above, it is GenPGM’s position that the procedural motions set out in PPFN’s written submissions dated February 25, 2022 be dismissed. GenPGM does not object to the confidentiality motion, subject to GenPGM having the opportunity to view the Angler Creek Summary by way of a confidentiality undertaking and a reasonable opportunity to respond.

Yours Truly,

GENPGM INC.

<Original signed by>

Jeremy Dart
Environmental Manager