

Decision of the Joint Review Panel on Request for an Extension to Undertaking 31 Deadline and Closing Remarks

On March 31, 2022, during the topic-specific session on Environmental Management, the Joint Review Panel (Panel) asked Generation PGM (GenPGM) to undertake to provide a revised list of commitments with the following information:

- All the mitigation measures, monitoring plans, follow-up programs and associated EMPs that GenPGM has committed to in the EIS, IR responses, and during the hearings.
- It should be clear what the purpose of each commitment is in relation to the valued components of the EA.
- Timelines associated with the development and implementation of each commitment.
- Full reference, as needed, to any guidance documents or regulations.
- Language such as “when feasible”, “as appropriate” “where possible” should be avoided.
- This list should be comprehensive and should not include reference to other documents prepared by GenPGM.

This is Undertaking 31.

During the April 1, 2022 hearing session GenPGM outlined for the Panel its proposed approach for responding to Undertaking 31. GenPGM suggested, and the Panel accepted, that it would provide its response to Undertaking 31 by the end of the public hearing. The current Hearing Schedule contemplates the conclusion of the hearing with closing remarks on April 13 or, if it is needed, April 14, 2022 (CIAR #1066). GenPGM’s response to Undertaking 31 is therefore currently due Thursday, April 14, 2022 at the latest (CIAR #1143).

Also on April 1, 2022, Biigtigong Nishnaabeg First Nation (BNFN) and Pays Plat First Nation (PPFN) both asked that GenPGM engage with them during the preparation of its response to Undertaking 31 and GenPGM committed to doing so (CIAR #1215).

On April 6, 2022, during the community hearing session at Biigtigong Nishnaabeg, GenPGM and BNFN requested that the Panel extend GenPGM’s Undertaking 31 response deadline. GenPGM explained that it had completed its initial engagement with BNFN and PPFN with respect to its Undertaking 31 response. GenPGM stated that PPFN’s concerns focus on the environmental matters that are highlighted in its presentations to the Panel and GenPGM will consider these concerns and engage further with Pays Plat.

With regard to BNFN, GenPGM stated that BNFN requested significant and in-person engagement regarding GenPGM’s Undertaking 31 response. In particular, GenPGM stated that BN asked for three things:

- 1) it asked GenPGM to discuss and explain its proposed commitments with respect to BN issues and concerns expressed during the hearings;

- 2) it asked GenPGM to make its technical experts and team available if there are any additional questions from BN (its experts or the community);
- 3) BN requested an opportunity to make supplemental closing submissions, if necessary, with respect to GenPGM's Undertaking 31 response.

GenPGM stated that it had accepted those requests and that this will necessitate additional time to complete additional engagement with BNFN regarding its response to Undertaking 31.

Consequently, GenPGM and BNFN jointly requested that GenPGM's deadline for responding to Undertaking 31 be extended for four weeks, from April 14, 2022 to May 12, 2022. GenPGM stated that it would file its Undertaking 31 response as soon as its additional engagement with BNFN is complete (i.e. potentially sooner than May 12, 2022). GenPGM also stated that it accepts BNFN's request to potentially make supplemental closing submissions regarding GenPGM's Undertaking 31 response, on or before the date of its Undertaking 31 response filing.

GenPGM and BNFN submitted that the proposed Undertaking 31 extension will allow the Panel and participants to complete all hearing steps within the current Hearing Schedule (CIAR #1066), with the exception of GenPGM's engagement with BNFN regarding its Undertaking 31 response. Finally, GenPGM and BNFN stated that they acknowledge that, from a legal perspective, if the Panel were to grant the extension request:

- (1) the record for the hearing would not be closed until GenPGM files its Undertaking 31 response, pursuant to Section 16(c) of the Panel's Public Hearing Procedures (CIAR #956); and,
- (2) the statutory timeline for the issuance of a Decision Statement in respect of the environmental assessment of the Marathon project will be paused from April 14, 2022 to when GenPGM's Undertaking 31 filing is made, pursuant to section 54(6) of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). In other words, the Panel's deadline for completing its Report and Recommendations will be extended by the length of time it takes GenPGM to file the response to Undertaking 31.

The Panel invited comments from participants on GenPGM and BNFN's request. In addition, given the potential significance of the response to Undertaking 31, the Panel stated that it was considering deferring closing remarks until after GenPGM submits its response to Undertaking 31. The Panel explained that, as noted by GenPGM, the clock will be stopped during the time it takes for GenPGM to prepare and submit its response to Undertaking 31, so deferring closing remarks should not result in material delay to the process.

The Panel received comments from several participants, including from GenPGM and BNFN on the Panel's suggestion that closing remarks be deferred until after the response to Undertaking 31 is submitted. No participant objected to the requested extension for filing the response to Undertaking 31.

With regard to deferring closing remarks, several participants supported this, including MiningWatch Canada (CIAR #1256), PPFN (CIAR #1255) and Natural Resources Canada (CIAR #1249). Some participants opposed deferring closing remarks, including the Town of Marathon (CIAR #1251), GenPGM (CIAR #1253) and BNFN (CIAR #1258).

Panel Ruling

1. Extension of Time to Submit Response to Undertaking 31

The Panel accepts the joint submission of GenPGM and BNFN that additional time is required for GenPGM to engage with BNFN as it prepares its response to Undertaking 31. The Panel notes that no participant has objected to the request. The Panel also acknowledges that PPFN clarified (CIAR #1265) that it expects further engagement with GenPGM in relation to a revised list of commitments regarding the mitigation measures, monitoring plans, follow-up programs, and associated EMPs that they have committed to during the course of the EIS. Therefore, the Panel grants the request and directs that GenPGM submit its response to Undertaking 31 on or before May 12, 2022.

2. Deferral of Closing Remarks

The Panel acknowledges that neither GenPGM nor BNFN requested that closing remarks be deferred as a result of the requested extension of the time for responding to Undertaking 31. However, as expressly noted in paragraph 1(c) of the Public Hearing Procedures (CIAR #956), the Panel has the discretion to change the procedures for the hearing if they are satisfied that doing so will better achieve the objectives of the public hearing.

GenPGM and BNFN oppose the deferral of closing remarks on the basis that the extension to respond to Undertaking 31 was requested for the “single and exclusive purpose” of providing more time for GenPGM and BNFN to engage on matters “which disproportionately impact” BNFN. The Panel understands and accepts that the purpose of the requested extension was to facilitate further engagement; however, the Panel does not accept that Gen PGM and BNFN are the only hearing participants who are affected by the extension and who may wish to comment in closing remarks on the updated list of commitments. The effect of the extension requested by GenPGM and BNFN and granted by the Panel is that no hearing participant, other than GenPGM and BNFN, will see the response to Undertaking 31 until as late as May 12, 2022, four weeks after April 13, 2022, the date currently scheduled for closing remarks.

GenPGM characterizes deferring closing remarks as “Entire Process Delay” and BNFN similarly refers to it as a delay to the “entire hearing process”. The Panel observes that the hearing process is nearing its completion and what is being contemplated is simply deferring the final step in the hearing process, not the “entire” hearing process.

Further, in making the request for an extension to responding to Undertaking 31, GenPGM acknowledged that pursuant to section 54(6) of CEEA 2012 the time within which a decision statement on this environmental assessment must be issued will not include the four weeks within which GenPGM will complete its engagement with BNFN and submit its response to Undertaking 31. What the Panel is

contemplating is rescheduling oral closing remarks to a date 7 calendar days (unless the date falls on a weekend) following submission of the Undertaking 31 response. There is no “delay” as suggested by GenPGM and BNFN because the clock will start running again upon GenPGM submitting its response to Undertaking 31.

It has become apparent to the Panel that GenPGM’s response to Undertaking 31 will constitute an important piece of information in this environmental assessment. Therefore, as noted above, the Panel believes the response to GenPGM will be of interest to all participants in the hearing, not just GenPGM and BNFN. Therefore, the Panel believes it is important that all hearing participants have the opportunity to review the undertaking response prior to making closing remarks. If there are hearing participants who believe they do not need to review the undertaking response prior to submitting closing remarks, they remain free to file written closing remarks any time between the final hearing session, on April 9, 2022, and the date on which oral closing remarks will take place.

Accordingly, the Panel has decided to reschedule the date for oral closing remarks, to that date which is no later than one week following submission by GenPGM of its response to Undertaking 31. If that response is submitted May 12, 2022, oral closing remarks will take place on **Thursday, May 19, 2022**. Should GenPGM submit the undertaking response before May 12, 2022, oral closing remarks will be scheduled for no later than one week after the date on which the undertaking response is submitted (unless that date falls on a weekend, in which case they will be scheduled for the following Monday). While this introduces some uncertainty into the end date of the hearing, the Panel believes that is outweighed by the benefit gained by not waiting until May 19, 2022 to hear oral closing remarks.

If you have any questions or concerns related to this decision, please contact Jason Patchell, Acting Panel Manager at marathonminereview-examenminemarathon@iaac-aeic.gc.ca.

Sincerely,

<Original signed by>

Debra Sikora