



Court File No. **VLC-S-S-245853**

No. _____

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

**SKEENA WATERSHED CONSERVATION COALITION, KISPIOX VALLEY
COMMUNITY CENTRE ASSOCIATION and KISPIOX BAND**

Petitioners

And:

**BRITISH COLUMBIA ENERGY REGULATOR and PRINCE RUPERT GAS
TRANSMISSION LTD.**

Respondents

PETITION TO THE COURT

ON NOTICE TO:

British Columbia Energy Regulator

2950 Jutland Rd
Victoria, BC, V8T 5K2

AND TO:

Attorney General of British Columbia

Ministry of Attorney General
Ministry of Attorney General
Legal Services Branch
3rd Floor – 1001 Douglas Street
Victoria, BC V8W 2C5

AND TO:

Prince Rupert Gas Transmission Ltd.

1133 Melville Street
Suite 3500, The Stack
Vancouver, BC, V6E 4E5

AND TO:

Nisga'a Nation

c/o Aldridge + Rosling LLP
Suite 1320 – 999 W. Hastings Street
Vancouver, BC, V6C 2W2

AND TO:

Western LNG ULC

1600 – 925 West Georgia Street
Vancouver, BC V6C 3L2

The address of the registry is:

Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

The Petitioners estimate that the hearing of the Petition will take 2 days.

This matter is an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below, by the persons named as petitioners in the style of proceedings above.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to the petition

A response to petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,

- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service,
or
- (d) if the time for response has been set by order of the court, within that time.

(1)	<p>The ADDRESS FOR SERVICE of the petitioner is:</p> <p>390-425 Carrall Street Vancouver, BC V6B 6E3 Tel. 604-685-5618 Fax 604-685-7813</p> <p>Email address for service of the petitioners: mhulse@ecojustice.ca; aazevedo@ecojustice.ca; bgabel@ecojustice.ca</p>
(2)	<p>The name and office address of the petitioner's lawyers are:</p> <p>Matt Hulse, Barrister & Solicitor Andhra Azevedo, Barrister & Solicitor 390-425 Carrall Street Vancouver, BC V6B 6E3 Tel. 604-685-5618 ext 255/256 Fax 604-685-7813</p>

CLAIM OF THE PETITIONERS

Part 1 ORDERS SOUGHT

1. An order pursuant to subsection 2(2) of the *Judicial Review Procedure Act*, RSBC 1996, c 241 (“*JRPA*”), declaring that the British Columbia Energy Regulator (“BCER”) unlawfully allowed construction to start on Section 5B of the Prince Rupert Gas Transmission (“PRGT”) project without requiring that Prince Rupert Gas Transmission Ltd. (“PRGT Ltd.”) meet mandatory pre-construction Conditions 4 and 5 of the permit for Section 5 of the PRGT project.
2. An order in the nature of certiorari pursuant to sections 2(2), 3, 5 and 7 of the *JRPA* quashing and setting aside the BCER’s decision that Conditions 4 and 5 of the Section 5 permit for the PRGT project were met despite the BCER or PRGT Ltd. failing to conduct an up to date cumulative effects assessment for the whole project;
3. An order for a final injunction pursuant to subsection 2(2) of the *JRPA* prohibiting construction on the PRGT project from continuing until an up to date cumulative effects assessment for the whole project has been completed;
4. An order that the parties shall bear their own costs in this proceeding, regardless of the outcome of the proceeding; and
5. Such further and other relief as this Honourable Court deems just.

Part 2 FACTUAL BASIS

A. The Parties

1. The Petitioner Skeena Watershed Conservation Coalition (“Skeena Conservation”) is a registered society in British Columbia with its main office in Hazelton, British Columbia. Its mission is to cultivate a sustainable future from a sustainable environment rooted in the region’s culture and a thriving wild salmon ecosystem in the Skeena Watershed. Skeena Conservation’s work includes hosting community meetings and information sessions regarding proposed development in the Skeena Watershed; conducting and supporting baseline research on fish, wildlife, and cultural heritage; supporting First Nations community initiatives; and engaging on long-term stewardship

planning in the Skeena Watershed. The PRGT project will be constructed through the Skeena Watershed. Skeena Conservation has been monitoring and raising concerns regarding the impacts of the PRGT since 2013 through the provincial environmental assessment process and other regulatory processes. This work has continued to 2024.

2. The Petitioner Kispiox Valley Community Centre Association (“Kispiox Community Association”) is a registered society in British Columbia. Kispiox Community Association has about 200 members, 175 who live in the Kispiox Valley, which is north of Hazelton, BC. Its purpose is to foster the development of the social and recreational life of the community and to represent residents, businesses, and those with an interest in the Kispiox and Skeena valleys. The PRGT project will be constructed through the Kispiox Valley. The Kispiox Community Association has written to decision-makers and supported its members in participating in the environmental assessment process for the PRGT project since 2013. In 2016, in response to oil and gas pipeline development in the valley, the Kispiox Community Association published the *Kispiox Valley Declaration* which was signed by approximately 160 residents of the Kispiox Valley and stated their concerns regarding the impacts of oil and gas development on wild salmon, forests, wildlife, clean air, and the local economy.
3. Both the Kispiox Community Association and Skeena Conservation have raised awareness about the impacts of the PRGT project and supported affected community members to engage with government regulators and elected officials. Both Kispiox Community Association and Skeena Conservation, separately and together, have written to the BCER and other provincial government representatives to raise concerns regarding the impacts of the PRGT project and the need for an updated cumulative effects assessment for the whole project.
4. The Petitioner Kispiox Band has 1555 members, including 607 members living on the Kispiox 1 reserve. The community of Kispiox, which is located on the Kispiox 1 reserve, is an eastern Gitksan village. The Kispiox Band Council is responsible for the governance and administration of the Kispiox Band. The Kispiox reserve is located approximately 5 km away from the proposed pipeline route for the PRGT project. The

Kispiox reserve is also located approximately 14 km from the proposed Kispiox gas-burning compressor station, a component of the PRGT project.

5. The Respondent BCER is the provincial regulator of energy resource activities, including gas pipeline construction, under the *Energy Resource Activities Act*, SBC 2008, c 36 (“*ERAA*”). Prior to 2022, the BCER was called the BC Oil and Gas Commission.¹ The BCER issued, amended, and interpreted the pipeline permits at issue in this application for judicial review.
6. The Respondent PRGT Ltd. is the permit holder of the BCER permits issued for the PRGT project.

B. Background on the Prince Rupert Gas Transmission project

a. The PRGT project’s environmental assessment certificate expires in November 2024

7. The PRGT project is a 900 km, 48-inch diameter pipeline that was approved in 2014 by the Ministers of Environment and Natural Gas Development to transport natural (or “fracked”) gas from Hudson’s Hope in northeastern British Columbia to Lelu Island, south of Prince Rupert.
8. The PRGT project received a provincial environmental assessment certificate in 2014 after undergoing an environmental assessment pursuant to the *Environmental Assessment Act*, SBC 2002, c 43 (“*EAA 2002*”). The Ministers granted the certificate despite the BC Environmental Assessment Office concluding that there were significant adverse effects on caribou and greenhouse gas emissions.
9. The PRGT project, as defined in the project’s environmental assessment certificate, includes the gas transmission pipeline and associated infrastructure extending from Hudson’s Hope to Lelu Island. The project includes land-based and marine-based pipelines, compressor stations, a meter station, and ancillary facilities like construction camps.
10. Pursuant to section 18 of the *EAA 2002*, the environmental assessment certificate stated that construction on the PRGT Project had to substantially start within five years (by

¹ For consistency, this petition refers to the BCER as the name of the regulator even for decisions made prior to 2022.

November 25, 2019) or else the certificate would expire. Whether construction has substantially started is a decision of the provincial Minister of Environment under the *EAA 2002*.

11. An expiry date for an environmental assessment certificate is set to recognize that, over time, environmental science progresses, public attitudes can change, knowledge increases regarding the harm caused by certain types of development, and the character of a development site can change. The expiry date prevents long-delayed projects from proceeding based on reports and conditions that have become outdated.
12. The PRGT project was originally intended to supply gas to the Pacific Northwest LNG project on Lelu Island, which would export liquefied natural gas (“LNG”). However, the Pacific Northwest LNG project was cancelled in 2017 before construction began on either the PRGT or Pacific Northwest LNG projects.
13. In 2018, the *EAA 2002* was replaced by the *Environmental Assessment Act*, SBC 2018, c 51 (“*EAA 2018*”), and the environmental assessment certificate for the PRGT project was continued under the new act.
14. In 2019, PRGT Ltd. received a five-year extension for its environmental assessment certificate. If PRGT Ltd. does not substantially start construction by November 25, 2024, its decade-old environmental assessment certificate will expire and a new environmental assessment will be required to build the PRGT project.
15. In 2022, a new LNG export terminal, Ksi Lisims LNG, was proposed to be built on Pearse Island, north of Prince Rupert. Ksi Lisims LNG plans to connect to the PRGT project to obtain its gas supply. In July 2024, PRGT Ltd. applied to the BC Environmental Assessment Office to change the endpoint of the PRGT project from Lelu Island to Pearse Island to connect to Ksi Lisims LNG.
16. As this long-delayed project approaches the expiry of its 10-year-old environmental assessment certificate, PRGT Ltd. needs to complete enough construction before November 25, 2024 to obtain a substantial start decision from the Minister of Environment or its environmental assessment certificate will expire. If its environmental

assessment certificate expires, then PRGT Ltd. would have to stop construction on the PRGT project and undergo a new environmental assessment to continue construction.

b. The PRGT project can only begin construction if it meets the permit conditions set by the BCER

17. In 2015, PRGT Ltd. received permits from the BCER pursuant to the *ERAA* for seven sections of the pipeline, three compressor stations, and one metering station. The permitted pipeline sections are numbered from Section 1 at the east end of the pipeline to Section 7 at the west end of the pipeline.
18. For the purpose of permitting by the BCER, pipeline sections can be divided arbitrarily and have no connection to the environmental and social impacts of the pipeline.
19. The BCER permits for the PRGT project were initially scheduled to expire in 2017 if construction had not started or if the permits were not extended. With the cancellation of Pacific Northwest LNG in 2017, construction on the PRGT project did not start, but the BCER granted one-year extensions annually between 2017 and 2024 for each section of the pipeline. These permits will expire if the environmental assessment certificate expires.
20. In 2024, PRGT Ltd. notified the BCER and BC Environmental Assessment Office that it intends to start construction on August 24, 2024.

c. The permit for Section 5 of PRGT affects the Kispiox Valley

21. The focus of this petition is Section 5 of the pipeline, its subsections, and the associated permits. The Section 5 permit applies to the section of the PRGT project that is proposed to run west from the Skeena River across the Kispiox Valley, across Highway 37 and down the Nass Valley to the coast.
22. The Section 5 permit was initially granted on September 21, 2015 for two years. The BCER has issued seven permit extensions to extend the Section 5 permit to its current expiry date of September 21, 2024.
23. PRGT Ltd. has applied for another extension to extend the Section 5 permit until November 25, 2024 (the date of the environmental assessment certificate expiry) or

September 21, 2025 (in the event that the Minister determines that the PRGT project has been substantially started and the environmental assessment certificate does not expire).

24. Stakeholders in the Kispiox Valley, including the Kispiox Band, were notified of the Section 5 permit extension application in June 2024.

d. Permit conditions require a cumulative effects assessment “of the project” before construction can start

25. Every permit the BCER has issued for the PRGT project sets out conditions that must be met before construction can start. Each time the BCER extended the permits for the PRGT project, the BCER could amend or add to the permit conditions.
26. On September 22, 2022, when the BCER issued another annual extension of the Section 5 permit, it added Conditions 4 and 5 which created a requirement for the BCER to conduct an “assessment of cumulative effects of the project”, develop mitigation and offset measures, and send the assessment and mitigation measures to PRGT Ltd. prior to construction starting (the “Cumulative Effects Assessment Conditions”). In 2022, these Cumulative Effects Assessment Conditions read as follows:
 4. At least 6 months prior to construction start, the permit holder must provide the Commission (postpermitrequests@bcogc.ca) with notice for the purpose of receiving the following:
 - a. An assessment of cumulative effects of the project, and
 - b. A description all of [sic] mitigations and offsets required during and post construction to address cumulative effects and to avoid, minimize and restore impacts to the current use of land and resources for traditional purposes by an impacted First Nation.
 5. The Permit Holder must not start construction activities until it has received the assessment of cumulative effects of the project and description of mitigations and offsets referenced in (4) above.
27. Identically-worded conditions were added to the permits for each section of the pipeline and each compressor station in 2022.

28. In 2023, the Cumulative Effects Assessment Conditions were amended further to require that PRGT Ltd. provide information as directed by the BCER to complete the cumulative effects assessment in consultation with impacted Indigenous nations:
4. At least 6 months prior to construction start, the permit holder must provide the Regulator (postpermitrequests@bcer.ca) with notice for the purpose of receiving the following:
 - a. Direction from the Regulator on information requirements that will be needed for the Regulator, in consultation with impacted indigenous nations, to carry out an assessment of cumulative effects of the project,
 - b. An assessment of cumulative effects of the project, and
 - c. A description all of [sic] mitigations and offsets required during and post construction to address cumulative effects and to avoid, minimize and restore impacts to the current use of land and resources for traditional purposes by an impacted First Nation.
 5. The Permit Holder must not start construction activities until it has received the assessment of cumulative effects of the project and description of mitigations and offsets referenced in (4) above.
29. The purpose of the Cumulative Effects Assessment Conditions was to assess how cumulative effects had changed since the project was first permitted in 2015 and to address concerns of First Nations along the pipeline route.
- e. BCER quietly amended the Section 5 permit in 2024**
30. On February 7, 2024, the BCER received notice of construction start from PRGT Ltd. for “Section 5B” of the pipeline. This notice was not posted on the BCER website. The notice triggered the requirement to conduct a cumulative effects assessment of the project according to the Cumulative Effects Assessment Conditions in the Section 5 permit.
31. On or about June 11, 2024, the BC Environmental Assessment Office posted a notice of construction start on its website that it had received from PRGT Ltd. This notice said that construction would be starting on “Section 5B” of the pipeline on August 24, 2024.

32. The notice posted by the BC Environmental Assessment Office in June 2024 was the first time that the Petitioners had heard of Section 5B of the PRGT project. They had not been notified by the BCER of any change to the Section 5 permit and the BCER's website continued to only display the Section 5 permit, with no indication that the permit had been amended.
33. Despite requests by members of the Kispiox Community Association, the BCER did not share a copy of the amended Section 5 permit until mid-July 2024.
34. On or about July 17, 2024, the BCER posted the amended Section 5 permit on its website, which split the permit into Section 5A and Section 5B. The amended permit was dated April 18, 2024, almost three months prior to when it was posted publicly.
35. The permit conditions for Section 5A apply to three non-contiguous sections of the PRGT project:
 - a. the section of pipeline to the east of the Nisga'a lands through the Kispiox Valley;
 - b. a section of pipeline in the middle of Nisga'a Lands in the Nisga'a Lava Bed Memorial Protected Area; and
 - c. a small section of pipeline to the west of Nisga'a Lands.
36. The permit conditions for Section 5B apply to two non-contiguous sections of the PRGT project on Nisga'a Lands on either side of the Nisga'a Lava Bed Memorial Protected Area.
37. The permit conditions for both Section 5A and Section 5B continue to require a cumulative effects assessment "of the project" before construction can begin.

C. The Decision at Issue

38. At issue in this Petition is the BCER's decision to allow construction to start on Section 5B of the PRGT project without an up to date cumulative effects assessment "of the project" as required by the Section 5 permit (the "Decision").
39. On April 18, 2024, the BCER interpreted the Cumulative Effects Assessment Conditions in the Section 5 permit as only requiring a cumulative effects assessment of

Section 5B and mitigation measures for Section 5B, rather than an assessment of cumulative effects and mitigation measures for the whole project.

40. Further, the BCER did not prepare a new cumulative effects assessment for Section 5B. Instead, the BCER relied on direction from the Nisga'a Nation, who indicated to the BCER that the cumulative effects assessment for Section 5B had already been completed to their satisfaction as part of the supporting assessment and materials for the PRGT and Ksi Lisims LNG environmental assessment applications. The environmental assessment application for the PRGT project was 10 years old. The environmental assessment application for Ksi Lisims LNG does not apply to the whole PRGT route and has still not been finalized by the proponent or assessed by the BC Environmental Assessment Office. The BCER determined that these materials fulfilled the Cumulative Effects Assessment Conditions.
41. The BCER did not make this Decision public. The Decision has only been disclosed through emails from the BCER and other BC government officials in response to specific requests by members of the Kispiox Community Association and Skeena Conservation. The BCER has not provided any public reasons for the Decision, despite repeated requests from the Petitioners and other interested parties, such as the Gitanyow Hereditary Chiefs.
42. As PRGT Ltd.'s intended construction start date of August 24, 2024 approaches, the BCER has not justified its interpretation of the Cumulative Effects Assessment Conditions in the Section 5 permit and is instead allowing construction on the PRGT project to start.

D. Cumulative effects of the project and circumstances that have changed since 2014

43. According to BC's Cumulative Effects Framework, cumulative effects are "changes to environmental, social and economic values caused by the combined effect of past, present and potential future human activities and natural processes." By definition, an assessment of cumulative effects must be up to date and consider the combined effects of: the project as a whole, the effects of other existing, proposed, and reasonably foreseeable projects (e.g. pipelines, LNG projects, mining, forestry), and the effects of current environmental, social, and economic conditions.

44. Throughout the PRGT environmental assessment process in 2014, stakeholders, First Nations, and members of the public raised concerns about the cumulative effects of the PRGT project along with the effects of other planned industrial development along the pipeline route.
45. After the PRGT project received its environmental assessment certificate, the BC Auditor General in 2015 and the BC Supreme Court in its decision in *Yahey v British Columbia*, 2021 BCSC 1287 concluded that BC's approach to cumulative effects assessment, particularly in Northern BC, was ineffective. The BCER added the Cumulative Effects Assessment Conditions to the PRGT project permits after the BC Supreme Court released its judgment.
46. The BCER was aware of the need for an updated and comprehensive cumulative effects assessment for the PRGT project when it made the Decision.
47. The Petitioners have raised concerns about the cumulative effects of the PRGT project on air quality, water quality, fish, wildlife, greenhouse gas emissions, community health and safety, and infrastructure since 2014 and prior to the PRGT project's proposed construction start on August 24, 2024.
48. These concerns include those related to the construction that can start in Section 5B on August 24, as the activities in Section 5B will have spill-over effects on the surrounding region and will have additive effects with the rest of construction planned along the rest of the PRGT project route.
49. The BCER also was aware or should have been aware that circumstances have changed since the 2014 environmental assessment for the PRGT project, for example:
 - a. BC has introduced more stringent air quality standards and more ambitious greenhouse gas emission targets;
 - b. Natural conditions have changed; climate change is escalating, local rivers are warmer and have less water, salmon and other fish and wildlife populations are at higher risk, and more frequent wildfires are having an increasing impact on the region;

- c. PRGT Ltd. intends to change the pipeline route for the PRGT project to connect to a new proposed terminus at Ksi Lisims LNG north of Prince Rupert (rather than Lelu Island) and also intends to apply for a route amendment at the eastern end of the pipeline;
 - d. Petitioners witnessed the social and environmental impacts and regulatory violations associated with Coastal Gaslink, a natural gas pipeline just south of the PRGT project that has recently finished construction; and
 - e. Continued development has increased the cumulative impacts of industrial development in the region.
50. In 2016, British Columbia developed the Skeena Sustainability Assessment Forum with First Nations to conduct baseline data and establish thresholds for cumulative effects assessments in the region. The BCER has apparently not considered this information in its cumulative effects assessment.

Part 3 LEGAL BASIS

51. The BCER's Decision to allow construction to start in Section 5B of the PRGT project without an up to date cumulative effects assessment of the whole PRGT project is a statutory power of decision and a reviewable exercise of statutory power within the meaning of the *JRPA*.
52. In the alternative, the Decision is reviewable as an act of a sufficiently public nature to be amenable to review under s. 2(2)(a) of the *JRPA*.
53. As the Decision relates to the BCER's interpretation of its permit requirements and statute, it will be reviewed on a standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.
54. The Decision is unreasonable because a cumulative effects assessment "of the project" was not completed as required by the conditions in the Section 5 permit prior to the start of construction in Section 5B. The BCER's interpretation of the Cumulative Effects Assessment Conditions is absurd, incoherent, and unjustified in light of relevant legal and factual constraints.

A. The BCER’s decision to allow construction without a cumulative effects assessment “of the project” is unreasonable

55. The Decision is unreasonable because it allows construction to start without a cumulative effects assessment “of the project” as required by the conditions of the Section 5 permit (which includes Section 5A and Section 5B) and all other sections of the PRGT project.
56. The BCER’s interpretation of a cumulative effects assessment “of the project” as requiring only an assessment of the effects of construction in two non-contiguous sections of the PRGT project is absurd and cannot be justified in light of the following key factual and legal constraints:
- a. The plain meaning of the Cumulative Effects Assessment Conditions in the context of all of the BCER permits for the PRGT project and the project’s environmental assessment certificate;
 - b. The definition of “cumulative effects” as it applies to a 900 km pipeline;
 - c. The purpose of the Cumulative Effects Assessment Conditions when they were added to the Section 5 permit and other permits for the PRGT project in 2022;
 - d. The purpose of the BCER, as set out by the *ERAA*;
 - e. The impending expiry of the PRGT project’s environmental assessment certificate and the risk of proceeding with construction on an outdated environmental assessment;
 - f. Submissions made to the BCER repeatedly requesting an updated and comprehensive cumulative effects assessment of the PRGT project; and
 - g. Significant negative impacts on the Petitioners and the public without an assessment of cumulative effects of the PRGT project and the ability to create measures to mitigate those cumulative effects.
57. The BCER’s Decision sets a precedent for meeting the Cumulative Effects Assessment Conditions for permits along the remainder of the PRGT project route. Because these conditions are identical for all permit segments along the PRGT project route, the

Decision impacts how cumulative effects will be assessed along the whole 900 km route. The Decision affects everyone along the route of the PRGT project and means that the full, up to date impacts of construction and operation of the PRGT project will not be assessed and mitigated if the decision stands.

58. There is no justification for the BCER's interpretation of the Cumulative Effects Assessment Conditions in the Section 5 permit. There is only one reasonable way to interpret the cumulative effects condition, which is that it requires a cumulative effects assessment of the whole PRGT project when a notice of construction is received.
59. The BCER's interpretation of the Cumulative Effects Assessment Conditions in the Section 5 permit creates an absurd outcome in which a requirement for a cumulative effects assessment for a major pipeline project can be met by a conducting separate assessments of each segment of the pipeline, one at a time. Or, even more absurdly, by an assessment of non-contiguous subsections of a segment of the pipeline like the BCER did with Section 5B. This is, by definition, not a *cumulative* effects assessment. The Decision ignores the cumulative effects of all the impacts of the PRGT project on watersheds, communities, and ecosystems along the 900 km route and it also ignores the combined effect of those impacts with the impacts of other industrial development activities (e.g., forestry, mining, pipelines) in the region as well as regional ecosystem changes (e.g., climate change, wildlife trends) over the past 10 years.
60. The Decision puts PRGT Ltd. in breach of the *ERAA*. Section 21 of the *ERAA* prohibits a person from constructing and operating a pipeline unless they are in compliance with the *ERAA*, regulations, and their permit. In making the decision to not require an up to date cumulative effects assessment "of the project", the BCER has allowed PRGT Ltd. to begin construction without meeting the conditions of their permit, contrary to the *ERAA*.

B. There is no adequate alternative remedy

61. There is no adequate alternative remedy for challenging the Decision. An appeal to the Energy Resource Appeal Tribunal ("Appeal Tribunal") is not available to the Petitioners to challenge the Decision.

62. The Appeal Tribunal is only available to “eligible persons”, which does not include stakeholders or members of the public unless they are also landowners in the operating area. Further, landowners in the operating area can only appeal on grounds that the decision was made without due regard to the landowner’s submissions or a consultation report: *ERAA*, ss. 69 and 72.

63. As there appears to have been no notice or consultation of stakeholders or landowners outside of Section 5B regarding the Decision, no landowner would be able to appeal to the Appeal Tribunal to raise these issues.

C. Petitioners have standing

64. The Petitioners have standing, individually and collectively, to challenge the Decision.

65. Kispiox Band has private interest standing as the government of a community within 10 km of Section 5 of the PRGT project. Kispiox Band members will be particularly affected by the cumulative impacts of the construction and operation of the PRGT project given their proximity to the compressor station, work camp, and construction along the route. The BCER has recognized that construction in Section 5 of the PRGT project will affect Kispiox Band’s interests, but has failed to even notify Kispiox Band that the Section 5 permit had been amended or that BCER had determined that the Cumulative Effects Assessment Conditions were met.

66. The Petitioners should also be granted public interest standing as this judicial review raises serious and justiciable issues, all Petitioners have genuine interests in the need for a cumulative effects assessment prior to construction, and this judicial review is a reasonable and effective way to bring this issue before the courts: *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45.

67. Whether a decision-maker’s interpretation of a permit condition is reasonable is a justiciable issue as it is appropriate for judicial determination and can be assessed by an objective legal standard.

68. This Petition raises serious issues regarding whether the BCER has allowed construction on a major project to start without requiring that a key permit condition is

met and without providing any explanation to the public for making the Decision. The potential cumulative effects of the PRGT project go far beyond the Petitioners, from climate impacts that affect all British Columbians to watershed impacts to the Skeena River. Because the Cumulative Effects Assessment Conditions are identically worded for all of the BCER permits for the PRGT project, the Decision affects how pipeline construction and operational impacts will be assessed and mitigated along the entire route of this project.

69. This case has a reasonable prospect of success as the Decision is not purely discretionary; the Decision involves the interpretation of a clearly written permit condition that was added by the BCER to address concerns regarding the cumulative effects of the PRGT project. Despite being given the opportunity, the BCER has not justified the Decision in light of relevant legal and factual constraints listed above.
70. Each of the Petitioners have a genuine interest in the consequences of the BCER's decision to not conduct an up to date cumulative effects assessment of the whole project prior to construction start—as required by the PRGT permits. Each Petitioner represents people and interests that will be directly impacted by the cumulative effects of the PRGT project.
71. The Petition is a reasonable and effective means for challenging the BCER's failure to require an up to date cumulative effects assessment prior to the start of the construction for the PRGT project. The failure to conduct a new cumulative effects assessment and develop a mitigation plan for the cumulative impacts along the route transcends private interests and will affect everyone along the route. A judicial review is the only option as even landowners who are “eligible persons” under the BCER would not be able to challenge the Decision at the Energy Resource Appeal Tribunal if they were not notified or consulted.
72. If an affected Band and local community and conservation groups cannot obtain standing to judicially review this Decision, then the Decision will effectively be immune from review. Litigants with public interest standing are therefore necessary to ensure that state action conforms to statutory authority and that legal instruments are

given effect: *Council of Canadians with Disabilities v British Columbia (Attorney General)*, 2020 BCCA 241, at para 73.

D. Enactments and other grounds relied upon

73. The Petitioners plead and rely upon the *Energy Resource Activities Act*, SBC 2008, c 36; the *Judicial Review Procedure Act*, RSBC 1996, c 241; the *Climate Change Accountability Act*, SBC 2007, c 42; the *Environmental Assessment Act*, SBC 2018, c 51; the *Supreme Court Civil Rules*, BC Reg 168/2009, and such other enactments and grounds as counsel may identify.

Part 4 MATERIAL TO BE RELIED ON

1. Affidavit of Shannon McPhail, affirmed August 19, 2024;
2. Affidavit of Graeme Pole, affirmed August 20, 2024
3. Affidavit of Kai Nagata, affirmed August 20, 2024
4. Affidavit of Kolin Sutherland-Wilson, affirmed August 21, 2024
5. Affidavit of Jesse Stoepler, affirmed August 21, 2024
6. Such further materials as this Honourable Court may allow.

Date: August 23, 2024



Signature of lawyers for the Petitioners
On behalf of Andhra Azevedo and Matt Hulse

To be completed by the court only:

Order made
[] in the terms requested in paragraphs of Part 1 of this petition
[] with the following variations and additional terms:

.....
.....
.....

Date: _____

.....

Signature of [] Judge [] Master