IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Skeena Watershed Conservation Coalition v. British Columbia Energy Regulator,* 2025 BCSC 1607

Date: 20250820
Docket: S245853
Registry: Vancouver

Between:

Skeena Watershed Conservations Coalition, Kispiox Valley Community Centre Association and Kispiox Band

Petitioners

And

British Columbia Energy Regulator and Prince Rupert Gas Transmission Ltd.

Respondents

Before: The Honourable Justice Tammen

Reasons for Judgment

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Place and Dates of Hearing:	Vancouver, B.C. March 25-27, 2025
Place and Date of Judgment:	Vancouver, B.C. August 20, 2025

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Introduction and Overview

[1] This is an application for judicial review of a decision of the BC Energy Regulator ("BCER") to permit construction to commence on a section of the Prince Rupert Gas Transmission project (the "Project") known as Section 5B.

[2] The petitioners are the Skeena Watershed Conservation Coalition ("Skeena"), the Kispiox Valley Community Centre Association ("Kispiox CCA"), and the Kispiox Band ("Kispiox Band").

[3] The petition respondents are the BCER, Prince Rupert Gas Transmission Ltd. ("PRGT Ltd."), and the Nisga'a Nation as represented by Nisga'a Lisims Government ("NLG").

[4] The petitioners seek a declaration pursuant to section 2(2) of the *Judicial Review Procedure Act*, RSBC 1996, c. 241("*JRPA*") that the BCER unlawfully allowed construction to start on Section 5B of the Project by failing to ensure that a cumulative effects assessment of the project was done, as required by a condition called Condition 13, which was attached to the permit extension granted for that section of the Project. The petitioners also seek an order of *certiorari* pursuant to sections 2(2), 3, 5, and 7 of the *JRPA,* quashing and setting aside the BCER's decision that Condition 13 was met in the absence of an up-to-date cumulative effects assessment for the whole Project.

[5] The respondents PRGT Ltd. and NLG oppose all relief sought, and made submissions on all aspects of the petition. The respondent BCER opposes all the relief sought, but did not make submissions in defence of its decision. Rather, BCER addressed the statutory framework, the factual background to the decision, the standard of review, and the appropriate scope of the petition record. In addition, BCER submitted that the petitioners lacked standing to bring this petition, a position also advanced by the other two respondents, PRGT Ltd. and NLG.

[6] For the reasons which follow, I find that the petitioners do not have standing to bring this petition, and it must be dismissed on that basis.

Factual Background to the Petition

The Parties

[7] Skeena is a registered society in B.C. with a main office in Hazelton, B.C. Its stated mission is "to cultivate a sustainable future from a sustainable environment rooted in our culture and a thriving wild salmon ecosystem in the Skeena watershed."

[8] Kispiox CCA is a registered society in B.C. with approximately 200 members, 175 of whom live in the Kispiox Valley. Its purpose is to foster the development of the social and recreational life of the Hazelton community and to represent residents, businesses, and those with an interest in the Kispiox and Skeena valleys.

[9] The Kispiox Band is an Indigenous community of 1,555 members, including 607 members living on the Kispiox 1 Reserve. The community of Kispiox, located on the Kispiox 1 Reserve, is an eastern Gitxsan village. The Kispiox Band is a band as defined under the *Indian Act*, R.S.C. 1985, c. I-5. The Kispiox Band Council is not a rights or titleholder, but is responsible for the governance and administration of the Kispiox Band and matters affecting the Kispiox community. The Kispiox 1 Reserve is located within 15 kilometres of the proposed pipeline route for the Project.

[10] BCER is a regulator created by statute, specifically the *Energy Resource Activities Act*, S.B.C. 2008, c. 36 ("*ERAA*"). Pursuant to sections 2 and 3 of the *ERAA*, BCER is both a corporation and an agent of the government. Its purpose, per s. 4, is to "regulate energy resource activities in a manner that protects public safety and the environment, supports reconciliation with Indigenous peoples and the transition to low-carbon energy, conserves energy resources and fosters a sound economy and social well-being."

[11] Construction and operation of a major pipeline such as the Project is included within the ambit of "energy resource activities" over which BCER has responsibility. BCER exercises its oversight function primarily through the issuance and administration of project permits.

[12] PRGT Ltd. is the general partner of Prince Rupert Gas Transmission Limited Partnership, which itself is owned by NW Infrastructure Limited Partnership, a joint venture between the Nisga'a Nation and Western LNG ULC ("Western LNG"). PRGT Ltd. is the proponent of the Project.

[13] The Nisga'a Nation is "the collectivity of those aboriginal people who share the language, culture, and laws of the Nisga'a Indians of the Nass Area, and their descendants," according to the definitions contained within the *Nisga'a Final Agreement Act*, S.B.C. 1999, c. 2 (the "*NFAA*"). Pursuant to Chapter 11 of the *NFAA*, the Nisga'a Nation is a distinct legal entity with the capacity, rights, powers, and privileges of a natural person. The Nisga'a Nation also possesses the right to self-government, and the authority to make laws, as set out in the *NFAA*.

[14] The Nisga'a Nation is a party to the Nisga'a Treaty, as are His Majesty the King in right of Canada and His Majesty the King in right of British Columbia. The Nisga'a Treaty is a treaty and land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*. The Nisga'a Treaty addresses the continuing relationship between the Nisga'a Nation and the federal and provincial Crowns and sets out Nisga'a rights, including the right of self-government, under s. 35 of the *Constitution Act, 1982*.

[15] The Nisga'a Treaty continues the Nisga'a Nation's Aboriginal title as fee simple ownership of Nisga'a Lands, which are comprised of approximately 1,992 km of land within the Nass Area, the traditional territory of the Nisga'a Nation.

[16] The Nisga'a Nation acts through NLG, pursuant to Chapter 11, s. 7 of the *NFAA*.

The Project

[17] In its written submission, at paras. 16-20, BCER has helpfully and succinctly set out the broad factual backdrop to the Project and the events leading up to those most centrally engaged by this petition proceeding. I reproduce paras. 16-20 here:

> 16. The PRGT Project is an approximately 900 km pipeline intended to transport natural gas from Hudson's Hope in northeastern B.C. to a liquified natural gas export facility proposed to be constructed within Nisga'a lands on Pearse Island approximately 82 km north of Prince Rupert.
>
> 17. In British Columbia, projects that exceed certain prescribed thresholds are required to undergo environmental assessment. Environmental assessments are managed by the Environmental Assessment Office ("EAO"), a regulatory agency that reports to the Minister of Environment and Climate Change Strategy.
>
> 18. Pursuant to the scheme set out in the *Environmental Assessment Act*, SBC 2002, c. 43, the PRGT Project underwent an environmental assessment and ultimately received an environmental assessment certificate on November 25, 2014.
>
> 19. Among other conditions, the environmental assessment certificate stated that the PRGT Project must be substantially started by November 25, 2019.
>
> 20. By 2019, construction on the PRGT Project had not begun. On an application by the project proponent PRGT, the EAO granted an extension of the date by which the project must be substantially started to November 25, 2024.

[18] PRGT Ltd. entered into project agreements in support of the Project with First Nations along the Project route. With respect to the Kispiox Valley and Skeena River region, PRGT Ltd. entered into a 2015 project agreement with the Gitanyow Nation Hereditary Chiefs, and entered into a 2016 project agreement with the Gitxsan Nation Hereditary Chiefs.

[19] The original terminus of the Project was to be a proposed liquefied natural gas facility located at Lelu Island, near Prince Rupert.

[20] The current proposed terminus for the Project is at Ksi Lisims, a proposed natural gas liquefaction and marine terminal to be located within Nisga'a Lands on Pearse Island, on the northwest coast of B.C., approximately 82 km north of Prince Rupert.

[21] Ksi Lisims is a joint development project between the Nisga'a Nation, Rockies LNG Limited Partnership, and Western LNG. Applications for an environmental assessment certificate for the Ksi Lisims project were submitted on October 16, 2023, and September 3, 2024.

[22] BCER has issued multiple permits for the Project between 2015 and 2025. The Project, as is common in the industry, is divided into sections. Separate permits are required for each section of the pipeline.

[23] There is no legislation specifying how pipelines are to be divided for permitting purposes; much is left to the discretion of the pipeline proponent.

[24] The permit for Section 5 was first issued on September 21, 2015, and was valid for two years. Since 2017, the Section 5 permit has been extended annually to its current expiry date of September 21, 2025 or the expiry of the environmental assessment certificate, whichever occurs first.

[25] Section 5 of the pipeline commences on the east side of the Skeena River, approximately 13.5 km north-east of the Kispiox 1 Reserve, and proceeds west to approximately 2 km west of Ksi Hlginx River, near the coast. Section 5 arcs north around the Nass Mountain Ranges, a 40-60 km wide grouping of mountains. To the west of the Nass Mountain Ranges are Nass Valley and Nisga’a Lands; to the east are Hazelton, the Kispiox 1 Reserve, the Kispiox River watershed, and the Skeena River watershed.

[26] The western portion of Section 5 runs southwest down the Nass Valley through Nisga'a Lands toward the coast, running parallel to the east bank of the Nass River for a considerable distance.

The Cumulative Effects Conditions and Split Decision

[27] In March 2022, PRGT Ltd. submitted applications to BCER to extend the expiry date of the permits for sections 1, 2, 3 and 4 of the pipeline, which cover the area between Hudson’s Hope and New Hazelton. After consulting with First Nations potentially impacted by construction of sections 1-4, BCER decided to extend the permits and to impose additional conditions in the permits to address concerns raised during those consultations.

[28] In June 2022, PRGT Ltd. applied to extend the expiry date of the permits for sections 5, 6 and 7 of the pipeline and the permit for the Lelu Island meter station. BCER then referred the permit extension applications for comment to the First Nations potentially impacted by the extension applications.

[29] Although the consultations related to sections 5-7 did not generate any new concerns respecting project-related impacts, BCER decided to impose the same additional conditions in those permit extensions as had been imposed for sections 1-4. The Section 5 permit was extended on September 22, 2022.

[30] Among the new conditions was one requiring PRGT Ltd. to provide BCER with six months' notice of its intention to start pipeline construction. The relevant parts of that condition read:

> 4. At least 6 months prior to construction start, the permit holder must provide the Commission...with notice for the purpose of receiving the following:
>
> a. An assessment of cumulative effects of the project, and
>
> b. A description of all 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.

[31] Condition 8, another new condition, required PRGT Ltd. to submit, with its notice of commencing construction, a report detailing site-specific mitigation plans respecting the use of land and resources for traditional purposes by impacted First Nations.

[32] On September 6, 2023, NLG wrote to BCER expressing concern about the decision to include these new conditions in the permit extension. Of particular concern to NLG was the condition related to a cumulative effects assessment. NLG's position was that the new conditions unduly restricted NLG's ability to determine how and for what purpose Nisga'a Lands may be used.

[33] On September 21, 2023, BCER amended the cumulative effects conditions for Section 5. A new subsection (a) was added to Condition 4, which inserted, after "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…

[34] The previous subsections (a) and (b) remained unchanged, except for re-lettering.

[35] On February 7, 2024, PRGT Ltd. provided BCER with notice of its intention to start construction on Section 5 of the pipeline. PRGT Ltd. attached a report outlining its engagement with NLG, as required by Condition 8. PRGT Ltd. also requested that BCER initiate its review of potential cumulative effects pursuant to Condition 4 and advise PRGT Ltd. of any information required to support that review.

[36] On February 9, 2024, BCER provided notice to NLG, the Gitanyow Hereditary Chiefs, Lax Kw'alaams First Nation, and the Gitxsan Nation of a proposed amendment to the Section 5 permit which would divide the permit into three sections. The February 9, 2024, letter noted that the proposed amendment was responsive to concerns raised by NLG about the potential for permit conditions to interfere with the Nisga'a Nation's "exercise of its legislative authority in respect of how they use and administer Nisga'a Lands."

[37] NLG wrote to BCER on March 7, 2024, and reiterated its concerns with the new permit conditions. The letter addressed at some length the cumulative effects condition and NLG's position in respect of same. NLG noted that it had selected a specific corridor to serve as the primary utility corridor through Nisga'a Lands for all future projects, including the pipeline. With respect to potential cumulative effects, NLG stated that it was "satisfied with the assessments that have already been undertaken in respect of the PRGT Project, the WCGT Project, and the Ksi Lisims Project."

[38] The letter concluded with NLG's respectful request that BCER acknowledge that the cumulative effects condition had been satisfied by the Nisga'a Nation, as set out in the letter.

[39] On April 17, 2024, BCER advised PRGT Ltd. and NLG that it was proposing an amendment to the Section 5 permit that would divide the permit into two new permits, one pertaining to the portion of the pipeline which crossed Crown lands (5A) and one pertaining to the portion which crossed Nisga'a Lands (5B).

[40] On April 18, 2024, both PRGT Ltd. and NLG advised BCER that they had no objection to the proposed permit amendment.

[41] On April 18, 2024, BCER issued two amended permits, one for Section 5A and the other for Section 5B of the pipeline.

[42] The decision in relation to the split of the permit stated that BCER considered the cumulative effects condition to have been satisfied for section 5B based on the material submitted to BCER on February 7, 2024. No decision in that regard has yet been made for section 5A.

[43] Section 5B is approximately 77 km long and is located entirely within Nisga'a Lands. Section 5B is continuous except for the Nisga'a Lava Bed Memorial Protected Area, which remains part of Section 5A, and has always been subject to special conditions and authorizations from BC Parks.

[44] No part of Section 5B runs through the Skeena River watershed or the Kispiox Valley. There is no overlap between Section 5B, the Skeena River watershed, and the Kispiox River watershed.

Issues and Discussion

[45] As earlier noted, the petitioners challenge the substance of the decision to issue the permit in the absence of a cumulative effects assessment. The challenge does not include the decision to split the Section 5 permit into 5A and 5B.

[46] However, I have determined that I need not address the substantive challenge to the decision. Rather, the petition must be dismissed because the petitioners lack standing to bring this application for judicial review.

[47] Kispiox Band initially sought private interest standing. However, in the amended petition, this claim was abandoned. In the amended petition, all three petitioners seek public interest standing.

[48] The decision to grant a party public interest standing is an exercise of the Court's discretion. In exercising that judicial discretion, the Court must consider three overarching factors, namely:

1) Whether there is a serious justiciable issue raised;
2) Whether the party seeking standing has a real stake or a genuine interest in the matter;
3) Whether, in all the circumstances, the proposed suit is a reasonable and effective way to bring the issue before the courts.
(*Canada (Attorney General*) v. *Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at para. 37).

[49] The three factors should be "assessed and weighed cumulatively in light of the underlying purposes of limiting standing and applied in a flexible and generous manner that best serves those underlying purposes": *Downtown Eastside* at para. 20.

[50] I will first address each of the three factors individually, and then assess them cumulatively.

Serious Justiciable Issue

[51] I agree with previous decisions of this Court that in order to constitute a serious and justiciable issue, the question raised by the petition must be one of public importance which transcends the interests of those directly affected: *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union v. British Columbia (Chief Inspector of Mines*),

2014 BCSC 1403, para. 39; *Voters Taking Action on Climate Change v. British Columbia (Energy and Mines*), 2015 BCSC 471 at para. 55.

[52] Here, there is no such issue. The petitioners challenge a decision to issue a permit to a single section of a pipeline project, which itself has already undergone a full environmental assessment and overarching review *qua* "project." In the 2014 decision to approve the Project, the two responsible ministers (Minister of Environment and Minister of Natural Gas Development) concluded that the Environmental Assessment Certificate ("EAC") included legally enforceable conditions which gave them sufficient comfort that "no significant adverse effects are likely to occur, except with respect to caribou and greenhouse gas emissions." The ministers then concluded that "the benefits from the Project outweigh the potential significant adverse effects."

[53] No issue is taken with that decision in this proceeding. The thrust of the petitioners' position is that, because of the passage of time, an updated cumulative effects assessment was necessary. That submission hinges on the fact that the EAC was in the final year of its ten-year lifespan. That is undoubtedly so, but the more important fact is that the EAC had not yet expired and was still valid.

[54] In September 2022, BCER imposed the new cumulative effects condition in the Section 5 permit, but there is no evidence that the decision to do so was based on any concern that the EAC was outdated. Rather, the condition mirrored one that had been added to the permits for sections 1-4, based on specific concerns raised by impacted First Nations along those sections of the pipeline project.

[55] At its core, the petition challenges the micro-decision of BCER to consider its own cumulative effects condition to have been satisfied with respect to Section 5B. At a slightly broader level, the challenge is to the reasonableness of the interpretation of the condition by the BCER decision-maker.

[56] The petitioners submit that the decision at issue will have precedent value for future permitting decisions related to other sections of the pipeline. I cannot accept

that submission. There is no evidence that BCER considers permit decisions in that manner. Rather, there is considerable evidence that BCER consults directly with those impacted by construction within each section of the pipeline as permitting decisions are made.

[57] The petitioners' submission also fails to recognize the unique nature of the decision at issue, inasmuch as it related wholly to lands owned in fee simple by the Nisga'a Nation. It is difficult to envisage a more unique set of circumstances, given the unprecedented nature, at least in this province, of the Nisga'a Treaty and its legal implications. The Nisga'a Treaty effectively vests principal decision-making authority in the Nisga'a Nation with respect to Nisga'a Lands.

[58] I also consider the issue raised by the petition to be other than a "serious" issue, i.e., an issue of wide-ranging public importance. As noted, the petitioners challenge a single decision interpreting a permit condition for a single section of a pipeline project. The petitioners accept, as they must, that BCER has the discretion to impose and change permit conditions when amending permits. Those powers are conferred by sections 25 and 26 of the *ERAA*. Here, the petitioners challenge only the interpretation of one such condition in a specific case. That is not a serious issue regarding, for example, the limits of administrative or executive authority, or broad-ranging questions of statutory interpretation.

[59] Nor can I accept the petitioners' submission that "BCER's Decision to only consider the cumulative effects of Section 5B construction within Nisga'a Lands impacts all the people outside of this area who will be affected by Section 5B construction and the interaction between Section 5B construction with the construction of the rest of the pipeline and other industrial developments" (Petitioner's Written Submissions at para. 103). The impact of construction on other areas traversed by the pipeline can be assessed as and when permitting decisions are made for those pipeline sections. For the petitioners, that will be in reference to the permit for Section 5A.

Genuine Interest in the Proceeding

[60] This factor is concerned with whether the moving party has "a real stake in the proceedings or is engaged with the issues they raise": *Downtown Eastside* at para. 43. I agree with the submission of PRGT Ltd. that the petitioners do not have a real stake in these proceedings and the core issue raised by the petition. As noted, the permit decision is confined to Section 5B.

[61] Section 5B is wholly outside the Skeena River watershed, and it does not cross the Kispiox or Skeena Valleys. Section 5A crosses the Kispiox Valley.

[62] With respect to the Kispiox Band, they claim that they will be affected by "the construction of Section 5A and Section 4 of the pipeline, compressor stations, and construction camps on its water supply from the Skeena River" (Submissions at para. 114).

[63] With respect to both Skeena and Kispiox CCA, the fact that each is a society committed to one side of an issue is not sufficient to create a genuine interest for the purposes of public interest standing. The members of such a group do not necessarily have a stake different from the community generally: *Canadian Society for the Advancement of Science in Public Policy v. Henry*, 2022 BCSC 724 at para. 51.

[64] With respect to the Kispiox Band, the Band Council is not a rights or title holder for the Gitxsan people. The rightsholders for the Gitxsan people are the wilps, or house groups, represented by the Gitxsan Hereditary Chiefs. PRGT Ltd. has entered into a project agreement with the Gitxsan Nation Hereditary Chiefs on behalf of Wilp Delgamuukw, Wilp Geel, Wilp Gitluudaahlxw, Wilp Gwiiyeehl, Wilp Gyetm Galdoo, Wilp Kliiyeem Lax Ha, Wilp Luutkudziiwus, Wilp Mauus, Wilp Wii Eelast, Wilp Mukwilixw, Wilp Wosimlaxha, and Wilp Yagosip. Thus, it appears that the Gitxsan rights and titleholders do not raise the same concerns as the Kispiox Band.

Reasonable/Effective Way to Bring the Issue Before the Court

[65] At paragraph 51 of *Downtown Eastside*, the Court gave four examples of the types of interrelated matters which judges should consider under this heading, which were described as “not exhaustive but illustrative.” The four noted considerations were these:

1) The plaintiff’s capacity to bring forward the claim;
2) Whether the case is of public interest in that it transcends the interests of those most directly affected by the challenged law or action;
3) Whether there are realistic alternative means which would favour a more efficient and effective use of judicial resources and would present a context more suitable for adversarial determination;
4) The potential impact of the proceedings on others who are equally or more directly affected.

[66] Some of these considerations weigh in favour of granting standing to the petitioners. Others do not.

[67] I have no doubt that the petitioners have the capacity to bring forward their claim. They appear to have the resources to mount the challenge, and I agree with their submission that they present the issue in concrete, as opposed to merely hypothetical, terms.

[68] As for the public interest, I have already expressed my views on that issue in considering whether there is a serious justiciable issue. In short, the case as framed does not transcend the interests of those most directly affected by the challenged decision.

[69] The consideration of realistic alternative means is not straightforward. The party who is most directly affected by the decision is NLG. Given that NLG supports the decision, it will obviously not be challenging it. The only way in which the issue would be decided in an adversarial context is if I grant standing to the petitioners. However, in my view, the petitioners do not bring any useful or distinctive perspective to the resolution of the issues relevant to issuance of the Section 5B permit. The petitioners’ perspective relates to the broader issues of climate change,

cumulative effects of the entire project, and other concerns related to the environment.

[70] The petitioners may well have an opportunity to raise those concerns in an adversarial context when decisions are made on the permit for Section 5A. I tend to agree with the submission of PRGT Ltd. that the most reasonable and effective way to bring the issue before the Court is when, or if, a decision is made to permit construction on Section 5A of the pipeline. The petitioners submit that they "cannot wait until construction starts in Section 5A to bring this challenge because the effects of Section 5B construction extend outside of Nisga'a Lands and pipeline sections do not impact people or the landscape in isolation." In my view, that is not a principled basis on which to grant standing in the context of this petition. The broader potential impacts to the environment were considered at the time the initial EAC was issued. As I have repeatedly noted, the petitioners will have an opportunity to voice their concerns about construction in the areas traversed by section 5A when permitting decisions for that section are made.

[71] The potential impact of the proceedings on the rights of the party most directly affected by the decision, NLG, is obvious. NLG has chosen not to challenge the decision; indeed, it supports the permitting decision. That weighs against granting standing to the petitioners.

Cumulative Assessment of the Three Factors

[72] Considered cumulatively, the three factors do not favour granting standing to the petitioners. To some extent, Skeena and Kispiox CCA appear to be "busybody" litigants, seeking to challenge a micro-decision made in the course of a much larger project when that decision does not meaningfully affect them. I view the Kispiox Band somewhat differently. The Kispiox Band cannot be viewed as a mere "busybody" litigant. However, as I have noted, the interests of the Kispiox Band appear not to align precisely with the Gitxsan Hereditary Chiefs, the rights and titleholder who can most directly assert an interest in the overall pipeline construction.

[73] There will be an opportunity for all three petitioners to make their opposition to the Project known, when permitting decisions that directly impact their interests are made. There is no compelling reason to grant them standing at this juncture when the decision at issue only relates to construction on Nisga'a Lands.

[74] At paragraph 98 of their written submissions, the petitioners state:

> The Petitioners bring this Petition because of their concern that the cumulative effects of construction on Section 5B are not contained within Nisga'a Lands and that the BCER did not assess how the cumulative effects of construction on Section 5B will interact with construction on other sections of the project and with other industrial activities in the region.

[75] The Section 5A permit retains the condition requiring a cumulative effects assessment prior to commencing construction. Thus, the project proponents will need to provide the BCER with evidence that they have complied with the condition prior to being granted a permit to commence construction on Section 5A. The petitioners' opportunity to voice their concerns will likely come at that time, either at the permitting stage, or potentially at a subsequent judicial review proceeding.

Costs

[76] The respondents PRGT Ltd. and NLG seek costs of this proceeding against the petitioners. The petitioners submit that because this is public interest litigation, the parties should each bear their own costs.

[77] In B.C., there is a strong presumption set out in the *Supreme Court Civil Rules*, R. 14-1(9) that a successful party is entitled to costs "unless the court otherwise orders." Those concluding words vest considerable discretion in the presiding judge concerning an award of costs. In the majority of judicial review proceedings, costs are not awarded to or against the administrative decision-maker. In this case, that is not at issue because the BCER does not seek costs.

[78] In *Guide Outfitters Assoc. v. British Columbia (Information and Privacy Commissioner*), 2005 BCCA 368, the Court of Appeal considered how discretion in respect of costs should be exercised where it is asserted by an unsuccessful plaintiff

that the public interest was served by the commencement of the litigation. At para. 8 of *Guide Outfitters*, Hall J.A. said this:

> Several judgments of the courts in the province have recognized that questions of whether the public interest is served by the litigation may guide the court in exercising its discretion regarding costs. In *MacDonald*, *supra*, at para. 13, Mr. Justice Bauman referred to factors the Ontario Law Reform Commission considered may lead a judge to rule the parties should bear their own costs:
>
> (a) The proceeding involves issues the importance of which extends beyond the immediate interests of the parties involved.
>
> (b) The person has no personal, proprietary or pecuniary interest in the outcome of the proceeding, or, if he or she has an interest, it clearly does not justify the proceeding economically.
>
> (c) The issues have not been previously determined by a court in a proceeding against the same defendant.
>
> (d) The defendant has a clearly superior capacity to bear the costs of the proceeding.
>
> (e) The plaintiff has not engaged in vexatious, frivolous or abusive conduct.
>
> Although I consider these factors as useful ones to guide the Court in the exercise of its discretion as to costs, the overarching question is still whether the normal rule is unsuitable on the facts of this case. As Smith J. (as he then was) said in *Sierra Club of Western Canada v. British Columbia* (*Chief Forester*) (1994), 94 B.C.L.R. (2d) 331 at paras. 49-50, 117 D.L.R. (4th) 395 (S.C.), aff'd (1995), 7 B.C.L.R. (3d) 375, 60 B.C.A.C. 230:
>
> > I do not think it would be wise to establish a principle that any person bringing a proceeding out of a bona fide concern to vindicate his or her perception of the public interest should be insulated from an award of costs in all cases. Such a motive will always be a relevant and important factor, but it should not be considered to the exclusion of all other relevant and important factors. The Court must retain the flexibility to do justice in each case.
> >
> > In my view, the authorities cited do not set out any rule which must guide the exercise of my discretion. Rather, they set out examples of the relevant factors to be taken into account and illustrate that the factors… will be given more or less weight depending on their relationship to other pertinent considerations. In the result, whether to depart from the ordinary rule that costs follow the event is a matter within my discretion. The exercise of that discretion must be informed by proper principles, but it is nonetheless a decision to be made with regard to the particular facts before me.

[79] Factors (b) through (e), as set out in *Guide Outfitters*, generally favour the petitioners and militate against an award of costs to the successful respondents. I

cannot find that there has been anything vexatious or abusive about the petitioners' claim. Both PRGT Ltd. and NLG have a superior capacity to any of the three petitioners to bear the costs of this proceeding. The petitioners have no personal or pecuniary interest in the outcome of this proceeding. Nor has the issue been previously decided in a proceeding against these respondents.

[80] Factor (a), however, favours the respondents. That is so because of my earlier findings on standing, where I held that the petition does not raise a serious justiciable issue and that the issues do not transcend the interests of those most directly affected by the challenged decision.

[81] In deciding how to exercise my discretion, I must also look at bigger picture considerations. For example, the potential deleterious impact of an award of costs against the petitioners. Would such an award have a potential chilling effect on legitimate actions brought to further a laudable public interest objective? I should also consider the potential salutary effect of an award of costs. Would an award of costs signify to potential "busybody" litigants that they should weigh the public interest carefully before commencing an action?

[82] I should also consider the situation of the successful respondents. Unlike an administrative decision-maker, PRGT Ltd. and NLG were not required to participate in this proceeding to justify a decision which they made, nor to clarify any law or legislative scheme. Rather, they were forced to defend the decision in order to defend their private interests against potentially significant financial consequences.

[83] In *Sierra Club*, quoted with approval by Hall J.A. in *Guide Outfitters*, Smith J. (as he then was) awarded costs to the successful party, MacMillan Bloedel, after noting that it had "no practical option but to defend" the application and that it was "not drawn into the fray by any fault of its own, nor by any desire to act in the public interest to obtain clarification of the law."

[84] Similarly, in *Western Canada Wilderness Committee v. Cattermole Timber et al*, 2004 BCSC 723, Shabbits J. awarded costs to a successful respondent for

substantially the same reasons. Justice Shabbits found that the successful respondent was required to defend its private interests, and that the unsuccessful plaintiff was seeking to "have a private citizen fund the cost of unsuccessful litigation of its choosing": para. 18.

[85] Similar considerations apply here. The petitioners sought to challenge on judicial review a decision that had no obvious impact on them or their direct interests. They did so based on their general opposition to the pipeline construction. The two parties who were directly affected by the decision, PRGT Ltd. and NLG, were then forced to participate in this judicial review proceeding to defend their private economic interests.

[86] In all the circumstances, I see no reason to depart from the usual rule that the successful parties are entitled to costs. I award costs to both PRGT Ltd. and NLG against the petitioners, at Scale B.

Conclusion

[87] For the foregoing reasons, the petitioners lack standing to bring this petition and, therefore, the petition is dismissed.

[88] The successful respondents PRGT Ltd. and NLG are entitled to costs of these proceedings against the petitioners at Scale B.

"Tammen J."