



**GITANYOW HEREDITARY CHIEFS**

P.O. Box 148, Kitwanga B.C. V0J 2A0

PHONE: 250-849-5373 FAX: 250-849-5375

*August 13, 2024*

Ryan Stark  
Manager, Decision Support  
BC Energy Regulator  
Via Email Only: [Ryan.Stark@bc-er.ca](mailto:Ryan.Stark@bc-er.ca)

Dear Mr. Stark,

**RE: Requested commitment to cumulative effects assessment**

We write to request that the BC Energy Regulator (“BCER”) confirm by **August 19, 2024** that the BCER will complete a cumulative effects assessment of the Prince Rupert Gas Transmission project (“PRGT”), as a whole, in consultation with Gitanyow, prior to allowing any PRGT construction to proceed under BCER permit 5B or otherwise.

The BCER recently disclosed to Gitanyow for the first time that: “On February 7, 2024, PRGT provided written notification to the BCER of their intent to commence construction activities within areas encompassed entirely by the current Section 5B of their pipeline, satisfying the pre-construction requirements as conditioned in the permit for Section 5B of the PRGT pipeline” (BCER and EAO July 23, 2024 letter, p. 2). The BCER’s statement that pre-construction requirements were satisfied raises two significant concerns for Gitanyow.

**1) BCER relies on a permit that did not exist at the relevant time**

First, the BCER’s statement is inaccurate: there was no “Section 5B” permit in existence on February 7, 2024. Rather, the PRGT Section 5 permit was in force at that time (i.e. BCER permit 9708461, extension date of issuance September 21, 2023), which included engagement, notice, reporting and consultation requirements with respect to Gitanyow that were not met.

Gitanyow is deeply troubled that, as summarized in the Appendix to this letter, the BCER:

- failed to ensure that Section 5 permit pre-construction requirements were satisfied regarding engagement, notice, reporting and consultation with Gitanyow (Section 5 permit, Conditions 4-5, 7-9);
- withheld from Gitanyow the fact that, on February 7, 2024, PRGT provided notice to BCER of intent to start construction under the Section 5 permit;
- provided misleading answers to Gitanyow’s direct questions about whether BCER had received pre-construction notice from PRGT; and
- segmented the Section 5 permit in a manner that appears designed to facilitate faster construction by attempting to retroactively eliminate unsatisfied permit requirements for engagement, notice, reporting and consultation with Gitanyow.

The jurisprudence is clear that: “The Crown's duty to consult imposes on it a positive obligation to reasonably insure that Aboriginal Peoples are provided with all necessary information in a timely way so that they have an opportunity to express their interests and concerns...” (*R. v. Douglas*, 2007 BCCA 265, para. 39; *Halfway River First Nation v. British Columbia (Ministry of Forests)*, 1999 BCCA 470, para. 160, emphasis added). The BCER’s purported consultation with Gitanyow about segmenting the Section 5 permit into Sections 5A and 5B was inadequate because BCER withheld from Gitanyow the notice and reports BCER received from PRGT regarding commencement of construction under the permit.

## **2) Cumulative effects conditions not satisfied**

Conditions 4-5 of the Section 5 permit (now conditions 4-5 of the section 5A permit and condition 13 of the section 5B permit) require cumulative effects assessment of the PRGT project prior to construction. As set out in detail in Gitanyow’s June 11 letter, Gitanyow places importance on the consultation the BCER owes Gitanyow regarding the cumulative effects assessment of the PRGT project, as a measure for minimizing and mitigating project impacts on Gitanyow’s rights.

The BCER has not replied to Gitanyow’s June 11, 2024 letter requesting an explanation of how BCER will ensure compliance with the cumulative effects assessment permit conditions for PRGT (and the BCER’s commitment to Gitanyow to incorporate information from the Skeena Sustainability Assessment Forum into the cumulative effects assessment). The BCER has not begun consultation with Gitanyow regarding a PRGT cumulative effects assessment, and Gitanyow has seen no evidence of a cumulative effects assessment of any kind having been carried out with respect to the project.

Gitanyow can only assume, from BC's position that "the pre-construction requirements" have been satisfied for Section 5B of the pipeline, that BCER intends to pursue a piecemeal, permit-by-permit cumulative effects assessment of separate segments of the PRGT pipeline. Gitanyow profoundly disagrees with this approach and does not accept that it complies with the permit requirements, for the reasons set out in the June 11 letter.

Further, if BCER is indeed pursuing a permit-by-permit approach to PRGT cumulative effects assessment, then the BCER's segmentation of the Section 5 permit had the serious repercussion of excluding Gitanyow from any consultation on the completion of a cumulative effects assessment before the proposed project construction begins. Had the BCER *not* segmented the Section 5 permit, then the BCER would plainly have been required to conduct a cumulative effects assessment of the project in consultation with Gitanyow before the proposed imminent construction could begin under what is now Section 5B. This was not and could not have been apparent to Gitanyow at the time the BCER purported to consult Gitanyow on the Section 5 permit segmentation, because the BCER failed to inform Gitanyow about the proponent's notice of intent to commence construction under the Section 5 permit. (Furthermore, the BCER has not been transparent about its apparent piecemeal approach to assessing cumulative effects).

**Response requested from BCER by August 19, 2024**

Gitanyow is troubled by the BCER's lack of transparency and accountability with regard to consulting Gitanyow on a PRGT cumulative effects assessment, as well as the related segmentation of the Section 5 permit. However, Gitanyow seeks a constructive resolution to this matter.

We request that the BCER confirm by **August 19, 2024** that the BCER will complete a cumulative effects assessment of the PRGT project, as a whole, in consultation with Gitanyow, prior to allowing construction to proceed under PRGT permit 5B or otherwise.

This is a time-sensitive matter, given the proponent's proposed commencement of construction on August 24, 2024, and the lack of BCER response to Gitanyow's June 11, 2024 letter. We look forward to your prompt reply. Please continue to send all correspondence to Tara Marsden at [Tara.Marsden@gitanyowchiefs.com](mailto:Tara.Marsden@gitanyowchiefs.com)

Sincerely,

A handwritten signature in black ink, appearing to read "Glen Williams", is centered on the page.

Glen Williams/Malii  
President & Chief Negotiator

CC.  
Minister Josie Osborne, Energy, Mines and Low Carbon Innovation  
Nathan Cullen, MLA for Stikine

## **APPENDIX: SUMMARY OF INADEQUATE CONSULTATION ON BCER SEGMENTATION OF PERMIT 9708461 (the “Section 5 permit”)**

- PRGT provided written notification to the BCER on February 7, 2024 that PRGT intended to commence construction under the Section 5 permit (BCER July 23, 2024 letter, p. 2).
- Gitanyow was an “impacted First Nation” under Section 5 permit, a fact which the BCER explicitly confirmed in its February 28, 2024 letter to Gitanyow (p. 3).
- As an impacted First Nation, the Section 5 permit required that:
  - a. at least six months prior to commencing construction, PRGT provide to the BCER and Gitanyow a report from PRGT describing site-specific mitigation plans, including a summary of required pre-report engagement with Gitanyow as well as any information provided by Gitanyow and outstanding concerns raised by Gitanyow (Section 5 permit, Conditions 7-9);
  - b. Prior to the start of construction, the BCER carry out an assessment of the cumulative effects of the project in consultation with Gitanyow, after having received at least six months’ pre-construction notice from PRGT (Section 5 permit, Conditions 4-5).
- The BCER did not notify Gitanyow of the proponent’s intention to commence construction under the Section 5 permit.
  - Gitanyow did not learn of the proponent’s intention to start construction until May 30, 2024, from a letter from PRGT.
- At no time did Gitanyow receive a report or related engagement required under Section 5 permit conditions 7-9, nor was any consultation carried out with Gitanyow with respect to a cumulative effects assessment of the project as required by conditions 4-5.
- February 9, 2024: BCER advised Gitanyow that it sought to amend the Section 5 permit, to split the permit into smaller segments. The BCER would have been aware at this time that the proposed segmentation would remove notification, reporting and consultation requirements for Gitanyow with respect to PRGT’s February 7, 2024 notice of proposed construction under the Section 5 permit.

- In purporting to consult Gitanyow about segmenting the Section 5 permit, the BCER withheld from Gitanyow the fact that construction had been proposed under the Section 5 permit, and made the following misleading statements in response to Gitanyow’s questions:
  - a. Section 5 permit conditions 7-9
    - i. Gitanyow request: Gitanyow asked BCER to confirm that: “Gitanyow will be provided with the report referenced in Condition 8, based on engagement with Gitanyow as described in Condition 7, at least six months before construction is commenced on *any portion* of the project permitted under the Permits” (Gitanyow February 9, 2024 letter, p. 3, original emphasis).
    - ii. BCER response: “...the BCER can confirm that Gitanyow will be provided with the report referenced in Condition 8, based on engagement with Gitanyow as described in Condition 7 as referenced in permits 9708461 and 9708512, at least six months before construction is commenced on *any portion* of the project permitted within Gitanyow’s Traditional Territory” (BCER February 28, 2024 letter, p. 3, original emphasis).
    - iii. Concern with BCER response: The BCER withheld the fact that notice of construction had already been provided under permit 9708461 (the Section 5 permit), which was directly relevant to Gitanyow’s question. Moreover, at the time the BCER made the above statement, the BCER *must have already received* a report from PRGT under condition 8 of the Section 5 permit (this is the only basis upon which BCER could conclude pre-construction conditions were satisfied on February 7, 2024), yet BCER did not share this information with Gitanyow. The BCER’s statement suggests that BCER had pre-determined by February 28 to segment the Section 5 permit into Section 5A (including Gitanyow Lax’yip) and Section 5B (where construction was proposed), otherwise it is difficult to explain BCER’s response in the circumstances.
  - b. Section 5 permit conditions 4-5
    - i. Gitanyow request: Gitanyow asked the BCER to explain: “the scope and timeline” of the cumulative effects assessment required by Condition 4 of the Section 5 permit; “the scope and timeline of consultation” with Gitanyow regarding that cumulative effects assessment; and, **explicitly**, “Whether the Regulator has received notice from the Permit Holder pursuant to Condition 4.” Gitanyow also identified information from the

Skeena Sustainability Assessment Forum (“SSAF”) that would be necessary to incorporate into the cumulative effects assessment (Gitanyow February 9, 2024 letter, p. 3).

- ii. BCER response: “The BCER acknowledges your expectation that we include the SSAF’s recommended thresholds to cumulative impacts as a result of the PRGT Project. **Should PRGT provide their six months advance notice to the BCER**, the BCER will include this important information in its assessment” (BCER February 28, 2024 letter, p. 4, emphasis added).
  - iii. Concern with BCER response: The BCER actively misled Gitanyow by indicating no six-month notice had been provided under the Section 5 permit, whereas the BCER now maintains it had received such six-month notice on February 7, three weeks before it made this statement to Gitanyow.
- The BCER segmented the Section 5 permit into Sections 5A and 5B on April 18, 2024.
    - To Gitanyow’s knowledge, the BCER has not provided Gitanyow with the segmented permits for Section 5A and Section 5B, and the BCER failed to respond to Gitanyow’s explicit request for those permits (Gitanyow June 11, 2024 letter, p. 3). In July 2024, Gitanyow was advised by a non-governmental organization that the Section 5A and Section 5B permits had recently been posted online by BCER – this was the first time Gitanyow saw the segmented permits and learned the date they had been issued.
  - July 23, 2024: the BCER advised Gitanyow for the first time that BCER had been notified by PRGT on February 7, 2024, of PRGT’s intention to start construction.