

Citizen's Guide to Effective Engagement on the Proposed Northwest Transmission Line



Acknowledgement

This Citizens' Guide is intended for broad public consumption. It was written to answer some preliminary questions about the complex approval process for the Northwest Transmission Line project which proposes a new 287-kilovolt (kV) power next to Highway 37 in north-western BC.

This report is the product of Dogwood Initiative's staff, volunteers and contractors. Many people played an important role in its completion. It was primarily written by Paul Mably and Will Horter, with assistance from Michael Begg, Matt Takach and Charles Campbell. The Environmental Law Centre at the University of Victoria, particularly Courtenay Phillips contributed research. We would also like to thank Calvin Sanborn, the Legal Director of the Environmental Law Centre for his enthusiasm and support.

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Many others answered questions and provided important data. We especially want to thank Greg Brown of Pembina Institute and Tom Hackney of the British Columbia Sustainable Energy Association for their comments and insights.

Greg Brown and Pembina Institute also kindly contributed maps and photos.

As with any major research project, particularly one that underwent as many changes as the Northwest Transmission Line, some errors and omissions are almost inevitable. We used the best available data and attempted to be as accurate as possible. Any mistakes are mine as the author.



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Why this Guide?

A major decision is pending which could dramatically change the environmental, economic and social future of northwestern British Columbia. The BC Government is proposing to extend BC Hydro's electricity transmission line from Meziadin Junction to Bob Quinn Lake, with a potential plan to further extend the grid as far as Dease Lake. The Government has announced that it is willing to subsidize the building of this new transmission line with a subsidy of \$242 million in taxpayer money.

The BC government's stated objective with the project is to electrify the northwest. Government messaging has highlighted the desire to get rural, mostly-native communities in the region off diesel power generation. However, research reveals that there are a variety of much less expensive options for reducing the carbon footprint of diesel-dependant communities in the region.

The BC government's main interest in building the new transmission line is to facilitate the delivery of sufficient electricity to make economical several prospective mining projects proposed for the region. Therefore, discussions about the new transmission line really are about rapid large-scale industrial development in the region. Therefore, the proposed transmission line extension has many implications for the First Nations and existing communities and businesses of the Northwest Region. Approval of the project would usher in a much more rapid pace of development than in the past.

This Citizen's Guide is designed to inform affected First Nations and communities about the Northwest Transmission Line (NTL) Project, its potential impacts and how First Nations and communities may intervene in the transmission line approval process to ensure that their interests are protected. The Guide also identifies opportunities for the reform of specific laws to achieve this same purpose.

Description and Implications of the NTL Project

The Northwest Transmission Line proposal is to run a second 287-kilovolt (kV) electricity transmission line parallel to an existing 138 kV line from the Skeena Substation just south of Terrace to Meziadin Junction, then to extend the 287 kV line to a new substation at Bob Quinn Lake. A 38-metre-wide corridor would be cleared of trees and other obstacles. The entire project would add 335 kilometres of line to the existing provincial power grid.

The proposal to extend the grid is premised on the alleged need to transmit additional electric power north to facilitate several proposed mining and oil and gas projects in the region. Power demand projections show that the proposed mining projects account for over 97% of the demand for the power to be delivered by the NTL.¹

As of May 2007, there were five mining projects proposed within connection range of the proposed new line. However, numerous other mining companies are lobbying for the project because their proposed projects depend on accessing power. For example, in 2006 there were 171 mineral exploration projects in the Northwest Region, 48 per cent of the provincial total. Most of the projects are seeking to develop gold, molybdenum, copper, silver, coal and coalbed methane deposits.

Supporters of the grid extension (mostly mining companies with proposals in the area) claim that if the new transmission line were to be built, capital investments in north-western BC could total \$2 billion, producing, they claim, 1000 direct jobs and another 1000 indirect ones. According to the BC Transmission Corporation, "...the lack of grid power is a barrier to economic growth"² in the region.

While the exact route for the new line has yet to be determined, most of it will be on Crown land except for portions that pass through Nisga'a lands in the Nass Valley. Most of the settlements in the area are those of First Nations.

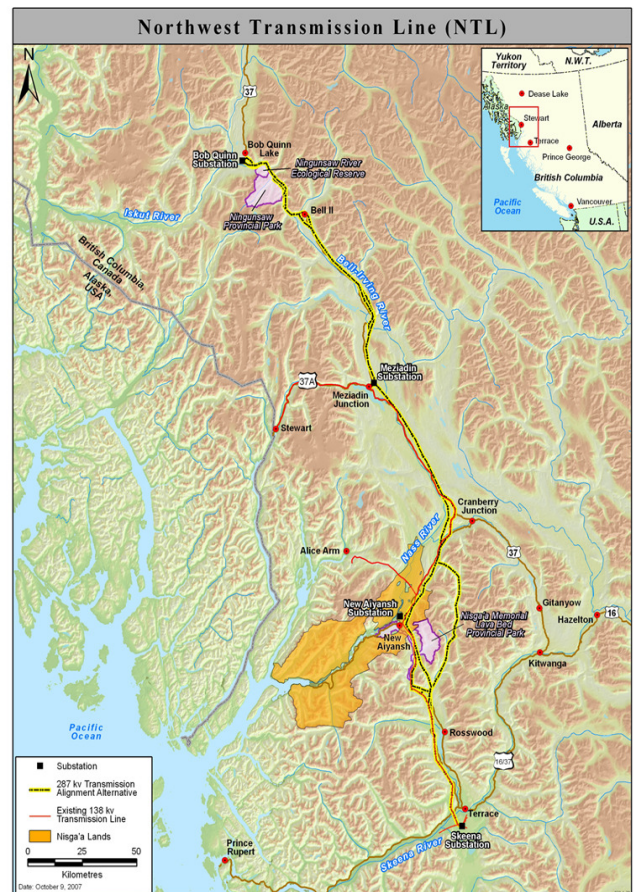


Figure 1: Proposed Northwest Transmission Line route

Government Agencies Involved

The main provincial government bodies involved in the project are:

1. The **British Columbia Transmission Corporation (BCTC)** is a Crown corporation formed in August 2003, reporting to the Minister of Energy and Mines. BCTC is responsible for planning, developing, operating and maintaining the province's publicly-owned electrical transmission grid. It is the main official proponent of the project.
2. **BC Hydro** is a Crown corporation formed in 1962, also reporting to the Minister of Energy and Mines. It continues to own the core transmission assets and is required to make capital expenditures to support them. It is responsible for consultations with First Nations on behalf of BCTC.
3. The **British Columbia Utilities Commission (BCUC)** is the arms-length, independent regulator of BC's natural gas and electricity utilities, including electricity transmission facilities³. It must approve any new investment in the transmission line before it is built. Generally, the BCUC makes its decisions following hearings or some form of mediation. However, the BCUC is required by law to "comply with any general or special direction ...of the Lieutenant Governor in Council" [i.e. Cabinet]⁴. This allows the BC government to override BCUC procedures around hearings and mediation. The BCUC also regulates BC Hydro. According to BCUC, "*the effects of regulation instil a high degree of public confidence that competing interests among monopoly utilities, consumers and other stakeholders are reconciled*".⁵
4. The **British Columbia Environmental Assessment Office (BCEAO)** "coordinates the assessment of proposed major projects in the province, working with First Nations, government agencies and the public to ensure [that] projects are developed in a sustainable manner. The assessment process examines major projects for potentially adverse environmental, economic, social, health and heritage effects".⁶

Many other governmental bodies, provincial, federal, regional and municipal, will also be involved at various stages if the NTL project goes forward. We have concentrated on the above-mentioned agencies as they provide the best points of access for communities and First Nations that have concerns about the proposed project.

First Nations

The traditional territories of 9 First Nations will be affected. Three main communities in the region that will be affected by the proposed mining projects facilitated by the proposed power line are those of the Tahltan people, who have a long history on the land: Iskut, which has a population of about 350 people; Dease Lake, which has a population of 700 people; and further west down the Stikine River, Telegraph Creek, which has a population of 450.

The affected First Nations include:

- (1) Nisga'a Lisims Government;
- (2) Kitselas First Nation;
- (3) Kitsumkalum First Nation;
- (4) Lax Kw'alaams First Nation;
- (5) Metlakatla First Nation;
- (6) Gitxsan;
- (7) Skii km Lax Ha (former House of Gitxsan);
- (8) Tahltan Central Council (Representing Iskut and Tahltan Bands); and
- (9) Gitanyow.

However, if the Northwest Transmission Line is built, additional First Nations north of those affected explicitly by the transmission line's footprint will be affected by the power line because it will facilitate a significant expansion in mineral and fossil fuel exploration and drilling in the region. However, the actual footprint of the transmission line and corridor is primarily in Tahltan and Gitxsan territory.

Communities and Stakeholders

The footprint of the proposed grid extension will be in close proximity to seven communities and settlements⁷.

A number of other interests have a stake in the decision including, mining and forestry companies and other business groups such as those in tourism, property owners, ratepayer groups, recreational user groups, trappers, fishers and hunters, non-governmental environmental groups, heritage trail groups, and local opinion leaders.

The most aggressive supporters of the new transmission line are the Mining Association of British Columbia⁸, the Association of Mineral Exploration of BC⁹, the Northwest Power Line Coalition¹⁰ and mining companies seeking to build mines in the region.

1. **The Mining Association of BC (MABC)** claims to be the “predominant voice of mining in British Columbia.” It promotes the interests of mineral producers, coal producers and companies involved in exploration, development and smelting of minerals provincially and nationally, with an emphasis on lobbying the BC government.¹¹
2. **The Association of Mineral Exploration of BC (AME BC)** also claims to be the “predominant voice of mineral exploration and related issues in British Columbia”. Established in 1912, it now represents over 5,000 members including geoscientists, prospectors, engineers, entrepreneurs, exploration companies, suppliers, mineral producers, and associations that are engaged in mineral exploration in BC and throughout the world.
3. **The Northwest Power Line Coalition**¹² is a constantly changing coalition of mostly mining companies lobbying for the approval of the new transmission line and a government subsidy to pay for it. It currently has 17 what it deems “contributors”, including 11 mining companies, three mining associations and two First Nation related business groups.

Collectively the lobbying of these groups is intended to accomplish two objectives:

- (1) Persuade the BC government to approve the NTL project; and
- (2) To have the government subsidize the construction of the power line with at least \$250 million in taxpayer money in order to reduce the costs of exploitation and mining of the regions mineral and fossil fuel resources.

Members of the Northwest Power Line Coalition have supplemented or enhanced their pro-power line lobbying efforts by directing significant donations to the BC Liberal Party. Between 1995 and 2005 the BC Liberal Party received over \$1.5 million in donations from the corporations, their officers and directors, and related companies affiliated with the Coalition.¹³

Timing and Status of the NTL Project

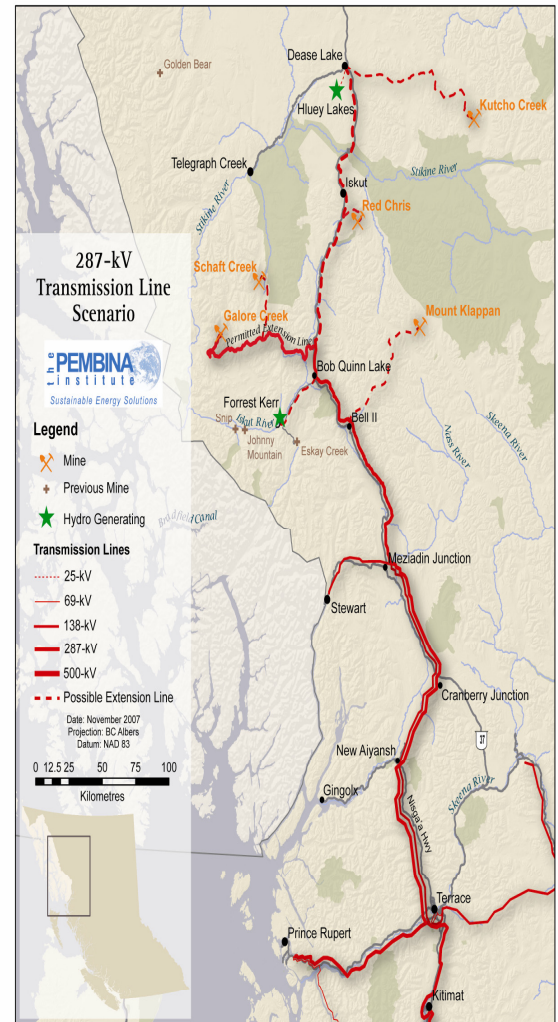
The initial impetus to building the new transmission line was the permitting in 2007 of the “first new metal mine in over a decade”¹⁴, at Galore Creek. The Galore Creek Partnership, owned by NovaGold Resources and Teck Cominco, planned on digging a gold-copper-silver mine approximately 1,000 km northwest of Vancouver, 150 km north of the deep-sea port in Stewart and 70 km west of Highway 37. The Galore Creek Partnership originally agreed to put up \$158 million, with taxpayers contributing the remaining \$242 million through BC Hydro.¹⁵

BCTC’s original schedule for the project anticipated the completion of assessments and receipt of all permits and certificates by October 2008, with an in-service date of October 2009. The schedule was later modified to project completion by fall 2011, with permitting and other approval processes to be completed by end 2008.¹⁶

BCTC got busy commissioning studies on wildlife and avalanches during the winter of 2007. It held community information sessions in Smithers, Terrace and Stewart in May 2007 and in Terrace and Stewart in November 2007. It submitted the project to the environmental assessment process on May 31, 2007. BC Hydro began meeting with First Nations communities.

The BC Government finally announced on October 1, 2007 that it would pursue the project (though it seemed to be pursuing it already). BCTC proceeded to call for contractors wishing to bid on the project construction contract to submit their Requests for Qualifications (RFQ) until December 7, 2007.

But shortly thereafter, on November 28, 2007, the BC Government suspended the NTL project. The reason given was that NovaGold and Teck Cominco mothballed their mining project at Galore Creek on November 26 due to the high cost of developing it.¹⁷ BCTC subsequently suspended the public comment period on the draft Terms of Reference (TOR) for the environmental assessment, as well as the RFQ process. The project has been on hold since then. Minister of Energy, Mines and Petroleum Resources Richard Neufeld said the NTL could no longer be justified without the level of power demand from a project like Galore, and without the significant monetary contribution from the private sector.

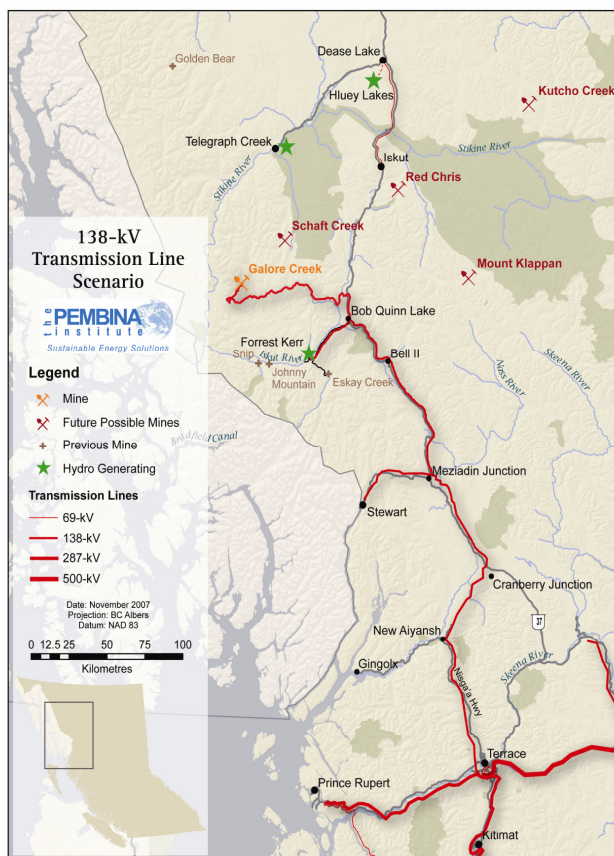


This map shows the 287-kV transmission line proposal (the solid red lines) and one scenario of possible mines and connections (in red dashed lines). Please note there are no plans in the proposal to connect this line to Iskut.

Recent Developments

In May 2008, Imperial Metals, which owns the planned Red Chris mine, announced that it is studying the feasibility of running its own 138kV line up the Highway 37 corridor in order to get the mine going. Along with the Mining Association of BC, it is pressing the provincial government to revive the NTL project.

The Mining Association and the Northwest Power Line Coalition of which it is part reportedly has a \$300,000 war chest to carry on its campaign, some of which is funding a supportive study by the Macquarie Group. It wants the BC government to continue the permitting of the power line without a private sector funding commitment, such that a “permitted and planned power line ready for construction” would help mining companies find financing for their projects.¹⁸



This map shows the 138-kV transmission line as originally proposed. It also shows a low-voltage line between Dease Lake and Iskut, a possibility which was not part of the original 138-kV line proposal.

Recently, NovaGold and Teck Cominco announced they are studying ways to restart their Galore Creek project and “expect to have a go-forward plan for the project in 2008”.¹⁹ The BC Premier reportedly reiterated the government’s commitment to \$250 million of funding for the NTL project on April 18, 2008.²⁰

Comments from BC Utilities Commission staff indicate that if the Northwest Transmission Line project is resurrected, they expect that the BC Cabinet would provide direction to the BCUC and that no public hearings would be held.²¹ When they originally announced their support for the Northwest Transmission Line project in 2007, they indicated that \$242 million of the \$400 million in project costs would be paid for through rates (i.e. by BC Hydro’s customers).

This means, in theory, that there should be a BC Utilities Commission review on whether the project is in the public interest: There should also be a decision by the BCUC on whether BC Hydro can recover the costs of the project through the rates it charges its customers (the cost of BCTC's grid extension would be billed to BC Hydro, which in turn would go to the BCUC for a ruling on how to pay for it).

However, the government's announcement seems to preclude a BCUC decision on whether the costs would be recovered through rates. From the BCUC perspective, the alternative to a charge on BC Hydro bills would be that the cost would be paid by the shareholder, i.e., the government. BCTC have indicated that they do not expect any BCUC review on whether the project should be built. However, to date the BC government has not specified by what process the Northwest Transmission Line proposal would be approved. On both these questions, the autonomy of the BCUC could be affected by potential government intervention.

Predicting the Future

The Dogwood Initiative believes that either Galore Creek or another mining project will get the required financial approval and financing to go ahead in the not-too-distant future. This will jump start efforts to revive BC government support for the Northwest Transmission Line proposal, with or without a private sector funding commitment.

Therefore, it is important to keep the pressure on the BC Government to respect approval processes once the mining companies decide to proceed. The best that can be said about the delay of the NTL project is that it gives First Nations and communities potentially affected by the project extra time to consider whether the type of rapid development that will accompany the NTL project is right for them, and to prepare their interventions for the inevitable NTL approval process.

Project Approval Process

Unless the BC cabinet directly intervenes and directs otherwise, the Northwest Transmission Line project will have to be submitted to four major approval processes:

1. a BC environmental assessment;
2. a federal environmental assessment;
3. a Heritage Inspection Permit and Archaeological Impact Assessment(s); and
4. a Certificate of Public Convenience and Necessity (CPCN) from the BC Utilities Commission (BCUC).²²

Other permits will be required from provincial or federal agencies, for example, permits to cut timber on the proposed right of way, and to install transmission structures on park lands or near water courses and fish habitats. However, these other approvals generally do not provide many opportunities for First Nations or affected communities or stakeholders to engage and participate.

BC Environmental Assessment:

The two most important steps in the BC assessment process are the Project Terms of Reference and a Section 11 Order.

The first important process in the environmental assessment is setting the Project's Terms of Reference (TOR). The TOR specifies the scope of the environmental and socio-economic studies to be undertaken to assess NTL's impact on the environment and communities, the consultation programs required to engage the public and First Nations, the information that needs to be included in the environmental assessment application, and requirements for the mitigation of project impacts. The Section 11 Order lays out the public consultation process for the assessment.

The generation of the TOR is guided by requirements set by the Canadian Environmental Assessment Agency (CEAA). BCTC will submit the draft TOR for regulatory review and approval. "The purpose of the draft TOR is to identify the information that BCTC must include in the application for an Environmental Assessment Certificate."²³

The environmental assessments are likely to consider potential project effects on:

- aquatic species and habitat
- terrestrial ecosystems, vegetation and wildlife
- land use and socio-economic/socio-community and cultural conditions

- visual landscape and recreational resources
- hydrology, soils, terrain and natural hazards
- First Nations' traditional knowledge and use
- heritage and archaeological resources
- navigation, transportation and utilities
- contaminated sites
- public health issues²⁴

Other topics may be added throughout the preparation of the TOR or the assessment itself. This is the first place where affected First Nations and communities must engage to ensure that issues important to them are studied, reported on and included in the assessment.

As mentioned, BCTC submitted the NTL project to the environmental assessment process conducted by the BC Environmental Assessment Office (BCEAO) on May 31, 2007. A draft TOR was posted in September 2007²⁵ and a public comment period opened from November 13 to December 13, 2007. The public comment period has been suspended along with the NTL project. If and when the NTL project is renewed and the public comment period is re-opened, affected First Nations, communities and stakeholders must be prepared to provide rapid input into the TOR process.

A Section 11 Order was issued by BCEAO on November 12, 2007²⁶.

Federal Environmental Assessment:

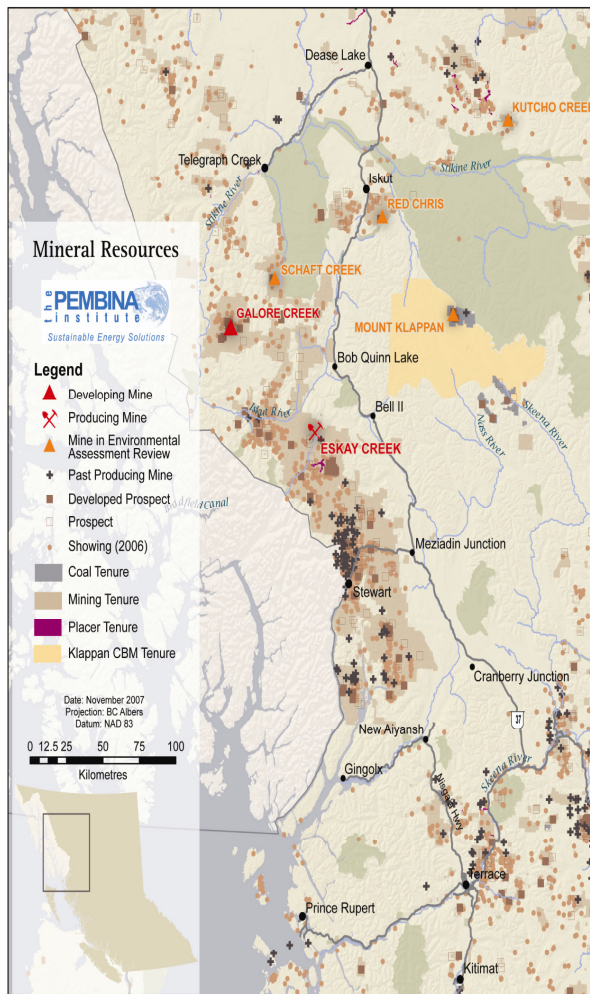
The project will likely need a screening-level assessment under the *Canadian Environmental Assessment Act* (CEAA) due to its possible impact on fisheries and navigable waters which are areas of federal jurisdiction. If this is the case, BCEAO would coordinate a joint federal-provincial environmental assessment. Each government makes its own decision based upon the joint assessment. Public participation is permitted under the *Act* at the discretion of the relevant authority.

Heritage Inspection Permit and Archaeological Impact Assessment(s):

As part of the environmental assessment, an Archaeological Overview Assessment and heritage resources inventory and assessment are to be undertaken by qualified specialists with the involvement of First Nations and various provincial ministries to identify historical sites in the NTL corridor.

On the basis of these assessments, a Heritage Inspection Permit is required prior to a more detailed *Archaeological Heritage Inspection Permit and Archaeological Impact Assessment(s)*:

As part of the environmental assessment, an Archaeological Overview Assessment and heritage resources inventory and assessment are to be undertaken by qualified specialists with the involvement of First Nations and various provincial ministries to identify historical sites in the NTL corridor.



This map shows the mineral resources of the region including the past producing mines from the southern regions and the potential mines in the north.

On the basis of these assessments, a Heritage Inspection Permit is required prior to a more detailed Archaeological Impact Assessment (AIA) which will confirm the presence of archaeological resources and recommend mitigation measures to avoid impacts on historical features intersected by the NTL. Such measures will be included in the Environmental Assessment Application. First Nations have been successful in intervening at this stage to ensure that both the contractors hired to conduct the AIA and the scope of the assessment is acceptable to them.

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Certificate of Public Convenience and Necessity (CPCN):

The BC Utilities Commission will review the need and justification for the project, alternatives and costs unless it receives direction to do otherwise from Cabinet.²⁷

It is up to the BCUC to decide if it wishes to hold public hearings on the CPCN application. BCUC may set public hearings, or it may engage in an Alternative Dispute Resolution Process/Negotiated Settlement Process

BCTC has yet to submit an application for the Certificate. If and when the NTL project is restarted, affected First Nations, communities and stakeholders need to begin lobbying the BCUC forcefully, to demand public hearings.

However, the government may intervene to give the BCUC direction, which could circumvent public hearings. The BCTC staff has indicated off the record that they believe that the Government would provide cabinet direction and they did not expect the BCUC to hold hearings.²⁸ However we believe a CPCN review is really worth fighting for, as it is a forum in which evidence can be brought and cross-examined in a competent forum.

The good thing about a BCUC review is that interested parties can bring evidence and cross-examine the evidence of the other parties. As well, BCUC decisions will primarily be grounded on basic and well-established principles of utility policy, including concepts of cost-effectiveness and public interest, rather than being a purely political process where the government can get away with poorly substantiated claims of benefits.

Therefore we suggest that affected First Nation, communities, groups and individuals immediately begin calling for public hearing if the Northwest Transmission Line project is resurrected.

Affected First Nation, communities and groups have powerful arguments to justify the need for public hearings. Over the last few years, the BC government went out of its way to revitalize the BCUC. The principles of ratepayer accountability underlying the Commission argue strongly in favour of public hearings on the Northwest Transmission Line proposal, including the massive scope and impact of the project on the region. Moving forward without a public process under a government directive would undermine the reputation and legitimacy of the BCUC.

Opportunities for Citizen Participation in the Project Approval Process

There are a number of processes that could potentially provide affected communities, First Nations, groups and individuals the opportunity to intervene on whether and how the Northwest Transmission Line project unfolds.

None of these processes are ideal; they each have limitations in scope or effectiveness in addressing certain types of issues. Below we detail some of the issues with some of the more important processes.

1. BC and Canadian Environmental Assessment

Environmental assessment law in Canada is complicated, making it difficult to be brief and comprehensive at the same time. In this guidebook we seek to be brief, yet to provide a high level overview of the challenges and opportunities it presents for groups concerned with the Northwest Transmission Line.

In BC the environmental assessment process is supposed “to ensure that community values and public goals for community development are considered in project planning and decision-making.”¹ Unfortunately, the *BC Environmental Assessment Act* makes public participation in the development of terms of reference discretionary, guided by the policies of the BC Environmental Assessment Office (BCEAO).²⁹

BCTC states that “First Nations, public and stakeholder engagement and consultation will occur through all stages of the NTL project planning, regulatory review and construction” through a variety of means. These include scheduled public meetings and information sessions, meetings with media in the project area, hardcopy and electronic mailouts, and reporting on the process and results of consultations.³⁰ Both BCTC and BCEAO maintain websites where “all relevant project documents are posted”.

BC Hydro will lead consultations with First Nations on the Northwest Transmission Line, while BCTC will lead the broader public consultations. First Nations consultation will take place throughout the pre-application stage of the Environmental Assessment and during the application review and public comment period following submission of the application. There may be further consultations following environmental certification.

BCTC has identified nine First Nations with potential interest in the project. BC Hydro’s Aboriginal Relations and Negotiations staff contacted these Nations by phone, letter and fax on February 9, 2007, providing them with a project introduction, background documentation and maps. Initial meetings took place over 8 weeks between First Nations representatives, BC Hydro coordinators and

¹ See Environmental Assessment Office website on public participation:

<http://www.eao.gov.bc.ca/participation.html>

BCTC's NTL Project Manager. The next step was to have been agreements with First Nations on capacity building and participation in the process.

In the pre-application phase, consultations are to take place with federal, provincial and municipal agencies, the public and First Nations on the issues and content of the Terms of Reference (TOR) for the environmental assessment. This starts with the formulation of a draft TOR by BCTC and the submission of this draft to a public comment period, inviting input from interested parties. The public comment period on Northwest Transmission Line is currently suspended.

Early engagement, particularly by affected First Nation, in defining the TOR for the environmental assessment should be a priority for any group with concerns about the Northwest Transmission Line. Ensuring good TOR exist does not ensure a positive outcome, but bad TOR that do not include full scope of the proposed project or that leave out relevant information make it difficult to achieve good outcomes.

Additional consultations occur in relation to the review of the Environmental Assessment Certificate Application, during the preparation of the draft Assessment report, and thereafter where deemed appropriate. Reports on all consultations are forwarded to those consulted. The proponent, in this case BCTC, must respond to all issues relevant to the NTL that are identified in the consultations.

Although the Environmental Assessment is intended to be a comprehensive review process, historically many First Nations and communities have been frustrated by the results of their engagement with the process. Until recently, no project had ever been rejected in a BC assessment.

Over the last few years First Nations have won a number of influential court cases that have an impact on environmental assessment. The *Haida* ruling by the Supreme Court of Canada in November 2004 held that First Nations must be involved in "strategic decisions" regarding licences for land use and resource exploitation on their territories. This means they must be consulted and accommodated before a new transmission line crosses their territory. However, disputes frequently develop between governments and affected First Nations over the scope and depth of these consultations and the degree to which First

The West Coast Environmental Dispute Resolution Fund (EDRF) is designed to help environmental and community groups use the law to better protect the environment. Established in 1989 with generous support from the Law Foundation of British Columbia, the Fund has helped groups across the province on issues as diverse as stopping helicopter logging in watersheds, to making submissions to government for better air quality regulations with respect to crematorium emissions. Through the Fund, groups can retain private lawyers, who may provide a legal opinion on an issue, represent the group in negotiating a solution to an environmental dispute, or argue a case in court or before a tribunal. The Fund provides financial assistance to concerned citizens and groups for three purposes:

1. **litigation** or participation in administrative tribunals;
2. participation in **alternative methods of dispute resolution** such as negotiation, mediation, or multi-stakeholder consultation, and,
3. **Experts' fees** to hire scientific experts such as fisheries biologists or hydrologists to provide an expert opinion in relation to a case supported by the Fund.

Nations input is integrated into the assessment process. Arguably consultation with affected First Nations should occur before any terms of reference are set for major projects like the Northwest Transmission Line. The failure to do so creates the potential for litigation.

First Nations and other affected groups should consider applying for an Environmental Dispute Resolution Fund grant (administered by West Coast Environmental Law with funds provided by the Law Foundation of BC) to help them engage in the Environmental Assessment process.

2. Certificate of Public Convenience and Necessity (CPCN)

We suggest that if the Northwest Transmission Line proposal is revived that affected groups immediately call for a CPCN review.

Since BCTC has not yet submitted NTL to BCUC, the form and timing of the Utility Commission's consultation process is an unknown. However, there is a real possibility of government intervention to circumvent the requirement for a CPCN. In fact, contacts within both BCUC and the BCTC indicate that if the project is resuscitated they expect the government to use section 3 of the *Utilities Commission Act* to avoid the need for public hearings.

If Cabinet doesn't circumvent the public process, typically the Commission will listen to intervenors regarding the process. A Negotiated Settlement Process would only be used if people thought there was a reasonable chance of an agreement. In some situations, where the issues are small or the project is relatively uncontentious, a written hearing could be used. However, for a project of this size, and given the strong opposition to it, an oral public hearing would be appropriate and provide the best opportunity for affected First Nations and communities to intervene in the project approval

The BCUC website says "The Commission's public hearing process is relatively formal and is similar to that of a court. Testimony is provided by witnesses under oath or affirmation. Witnesses are subject to cross-examination. While most intervenors are represented by counsel, it is by no means essential for participants to have their own lawyer".³¹ However, without a lawyer who is well versed in regulatory procedure, it would be very difficult for communities, First Nations or affected individuals or groups to engage in the complex process and participate effectively.

The *Utilities Commission Act* provides that intervenors can apply for awards to cover the costs of their interventions through the Participant Assistance Cost Award (PACA) system. Once approved, intervenor costs would be borne by the applicant, in this case the BCTC. This allows intervenors to hire lawyers and expert witnesses in order to challenge the economic assumptions of claimed benefits to the public. As well, if public hearings are held, there is a fair chance that some important regular intervenors in BCUC hearings might weigh in against the project. For example, the Joint Industry Electric Steering Committee (JIESC) intervenes regularly in BCUC proceedings and regularly opposes anything that

would raise their rates. Many stakeholders would probably not want to see a big, expensive power line paid for through their rates.

The public hearing would provide additional benefits. While the Northwest Transmission Line proposal has evolved without much public attention outside the region, a BCUC hearing would provide an event to broaden public awareness of the potential issues related to the project. While it is usually hard to get media interest on such a technical forum, the proceedings are public, and there is some chance of developing media coverage.

The hearings would also provide a forum for other stakeholders to voice their concerns. The BC Public Interest Advocacy Centre often represents groups that would likely oppose the Northwest Transmission Line. The BC Sustainable Energy Association and the Sierra Club of Canada—BC Chapter may also wish to intervene.

In order to best ensure that public hearings are required, we suggest that affected groups apply to West Coast Environmental Law for an Environmental Dispute Resolution Fund grant for representation to effectively engage the BCUC.

If they succeed in getting public hearings, affected communities and First Nations should quickly apply for a Participant Assistance Cost Award in order to offset the cost of participating in the process.

3. Heritage Inspection Permit and Archaeological Impact Assessment(s)

First Nations should be directly involved in the heritage resources inventory and assessment and Archaeological Overview Assessment. They will also be invited to participate in the field on the Archaeological Impact Assessment(s) and concurrent traditional knowledge and use studies which support the Impact Assessment.

4. Other Opportunities for Citizen Participation

The *Species at Risk Act* (SARA) is the federal law that protects species considered threatened, endangered or extirpated in Canada. SARA provides that anyone who considers that there is imminent threat to the survival of wildlife species may apply to the Council on the Status of Endangered Wildlife to assess the threat for the purpose of having the species listed as endangered on an emergency basis. Bull trout may be one such species that could be affected by the Northwest Transmission Line.³²

What will be done with the results of the consultations?

BC Environmental Assessment:

The results of both the studies undertaken during the environmental assessment and of the consultations will become part of the Environmental Assessment Certificate Application to the BCEAO. They will also be used to design mitigation measures which may be recommended “where appropriate” (that is, in the judgment of BCTC and BC Hydro) for writing into the NTL project design to counter potential adverse effects.

Mitigation measures will be compiled in a detailed Environmental Management Plan that will be used to minimize effects during project construction and operation and be a key resource guide for Construction Environmental Monitors. The Environmental Assessment Certificate Application will describe the potential effects of recommended mitigation measures, and “contain an assessment of cumulative environmental effects, an analysis of potential accidents and malfunctions, and an evaluation of the effects on the environment of the project”.³³

The proponent, in this case the BCTC, submits the Environmental Assessment Certificate Application to the BCEAO. BCEAO will make recommendations to appropriate ministers who then have 45 days either to issue the Environmental Assessment Certificate, issue a Certificate with conditions, reject the application, or request further information or studies.

Any decision by ministers or the executive director of the BCEAO is potentially subject to judicial review, though the scope for such review is limited under the *Act* due to the highly discretionary nature of the provincial environmental assessment process.³⁴ All documentation, including submissions by the public, is posted on the BCEAO website (www.eao.gov.bc.ca).

It is noted that the BCTC Project Description document considers only mitigation measures such as modifications to tower placement and design, or to alignment of the transmission corridor. It does not evaluate in any detail why the NTL alternative is preferable to other approaches. It does say that BCTC and BC Hydro considered two other possibilities: extension of the 138 kV line, and a combination of green power measures. These latter were deemed not to provide sufficient power for the planned mining operations.

Power demand thus appears to be the deciding factor in BCTC’s preference for the NTL. It is questionable whether BCTC gave adequate consideration to the effects of the type of large-scale and rapid development that is likely to accompany the opening of the NTL corridor. These are considerations that can be raised at the Assessment and other public consultations. But it is hard to escape the conclusion that once the Assessment is restarted, it is on the premise that NTL will go ahead in one form or another.

Federal Environmental Assessment:

Likewise, at the federal level, results of public consultations, results of specific studies and proposed mitigation measures are included in a report by the Canadian Environmental Assessment Agency to the federal Minister of the Environment, along with a recommendation to permit the project, continue with the environmental assessment (by way of a comprehensive study), or refer the project to a mediator or review panel.

The CEAA provides for further public consultation where the assessment goes to comprehensive study, a mediator or a review panel. All reports produced by these processes shall be made public and be approved by the responsible minister and/or Governor in Council (the Canadian Cabinet). All such decisions are potentially subject to judicial review. CEAA procedures are more rigid than those of the BCEAA. The consequence is that a judicial review will be more legally rigorous, therefore communities without funds for legal representation or studies may be at a disadvantage.

Certificate of Public Convenience and Necessity:

If public hearings are required—which did not appear to be the intention of the government when the project was still active—the results of BCUC public hearings, evidence and testimonies presented by the public, and the results of cross examination of witnesses by other intervenors and the Commission’s counsel, are taken into consideration by BCUC Commissioners in making their decision on the application. However, the BCUC is guided by a culture and rules that primarily focus on cost-effectiveness or lowest cost, as opposed to less tangible things like social co-benefits. Therefore, dollars and cents arguments are the most effective means to influence the Commission.

Final decisions are made public and posted on the BCUC website (www.bcuc.com).

Archaeological Impact Assessment:

It is important for First Nation to engage early on in the Archaeological Impact Assessment. First Nations that have effectively negotiated the terms of reference, scope and contractor hired to conduct the assessment generally attain the best results from the process. It is ultimately the results of the Archaeological Impact Assessment(s) that will assist in designing mitigation measures to avoid impacts on historical sites. The measures will be included in the Environmental Assessment Certificate Application, which becomes a public document.

In some circumstances First Nations have negotiated that members of their community be included on the assessment team or hired as experts in designing or conducting the assessment. If a First Nation is not successful, we suggest it approach West Coast Environmental Law and apply for an Environmental Dispute Resolution Fund grant to offset the cost of a lawyer or expert to act on its behalf.

Recommended Steps

1. Anyone interested in the Northwest Transmission Line proposal should contact the Premier's office and all Cabinet Ministers and urge the government to ensure that the BCUC convenes full public hearings.
2. Early engagement, particularly by affected First Nations, in defining the Terms of Reference for the BC Environmental Assessment should be a priority for groups interested in the Northwest Transmission Line.
3. If the Northwest Transmission Line proposal is resurrected by the BC government and sufficient funds are not readily available to retain a lawyer, immediately apply for an Environmental Dispute Resolution Fund grant to allow effective participation in the Environmental Assessment and possibly in the BCUC hearings.
4. Seek intervener status and a Participant Assistance Cost Award if BCUC hearings happen.
5. First Nations should directly engage with the proponent (BCTC) early on to ensure that they are comfortable with the terms of reference, experts and conclusions of the Archaeological Impacts Assessment.

Opportunities for Law Reform

It is surprising that a project of this magnitude, with implications for the environment, economy and social makeup of such a large region of the province, could go ahead without public hearings, particularly since the project is not contemplated by existing land use plans.

Affected communities, First Nations and interested NGOs should urge government to amend existing legislation to ensure that in future projects of this magnitude require broad public hearings, not just about mitigating impacts, but to determine whether such projects should go ahead at all.

Specifically the BCUC process should be amended such that major projects should require public hearing. The question of whether public hearings are required should not be left to the discretion of BCUC or the whims of Cabinet.

Also, existing legislation such as the *Mines Act*, *Mineral Tenures Act*, *Pipeline Act* and *Petroleum and Natural Gas Act* should be amended to require that any major industrial project proposed under these acts that is not authorized by existing land use plans, must undergo public hearings before proceeding.

Furthermore, the environmental assessment process needs to be amended to require intervenor funding. The process is complex and difficult to navigate without experienced counsel. Currently, communities, First Nations, affected groups and individuals are in the unenviable position where project proponents of mines, transmission lines and pipelines can effectively force them to incur the cost of expensive lawyers and experts to defend their interests. New mechanisms must be created to ensure that legal resources and experts are available to affected groups throughout the process.

The Dogwood Initiative and what it is prepared to do

First Nations people have approached Dogwood Initiative requesting strategic support to help them assert their rights and protect their community interests in relation to the Northwest Transmission Line proposal. First nations are concerned by the possible negative effects on their communities of electric grid expansion and the consequent increase in mining and other developments on their territories. They are also concerned by the secrecy that has surrounded the regulatory approval processes and the possibility that decisions are being made without their input. The NTL is a fundamental land use decision that will determine the future and model of development in northwest BC.

The Dogwood Initiative's premise is that communities have the right to be consulted and accommodated, and that this right, as exemplified by cases such as *Haida* and *Taku River Tlingit*, is a powerful lever for community involvement in land use decision-making. Dogwood Initiative is committed to helping First Nations to carefully establish the basis for the assertion of their rights and to control the terms of the consultation. The publication of this citizen's guide is one step in this process.

The Dogwood Initiative will also monitor compliance of the NTL project with the final terms of the various assessments and permits required of the project, whether or not these permits were reviewed during the public consultation process.

For More Information

BC Environmental Assessment Office, Northwest Transmission Line Project:
http://a100.gov.bc.ca/appsdata/epic/html/deploy/epic_project_home_299.html

BC Hydro, Negotiation and Consultation:
<http://www.bchydro.com/ard/initiatives/initiatives922.html>

BC Transmission Commission, Northwest Transmission Line Project:
http://www.bctc.com/community_engagement/project_consultation/nw_trans_line_project/

British Columbia Utilities Commission, Public Hearing Process:
<http://www.bcuc.com/Hearing.aspx>

Canadian Environmental Assessment Agency, Public Participation:
http://www.acee-ceaa.gc.ca/011/index_e.htm

Mining Association of BC, Power to the Hwy 37 Corridor:
<http://www.highway37.com/s/Home.asp>

NovaGold Resources, Galore Creek Mine project:
<http://www.novagold.com/section.asp?pageid=3358>

Pembina Institute, Sizing it up: Scenarios for powering Northwest British Columbia, Feb 19, 2008: <http://www.pembina.org/pub/1588> and <http://www.afterthegoldrush.ca/>

Endnotes

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- ¹ “Sizing it up”, Pembina Institute, p. 2: <http://pubs.pembina.org/reports/sizingitup-primer.pdf>
- ² British Columbia Transmission Corporation, “Northwest Transmission Line Project Description”, May 4, 2007, pp. 2-1, 3-1.
- ³ See <http://www.bcuc.com/CorpProfile.aspx> for a fuller description.
- ⁴ *Utilities Commission act section 3 Commission Subject to Direction:*
- 3 (1) The commission must comply with any general or special direction, made by regulation of the Lieutenant Governor in Council, with respect to the exercise of its powers and functions.*
- (2) The Lieutenant Governor in Council may, by regulation, issue a direction to the commission specifying the factors, criteria and guidelines that the commission must or must not use in regulating, and fixing rates for, the transmission corporation, as that term is defined in the Transmission Corporation Act, and the authority.*
- (3) The commission must comply with the direction under subsection (2) despite*
- (a) any other provisions of this Act, or*
- (b) any previous decision of the commission.*
- ⁵ BCUC 2006/07 Annual Report, p. 1
- ⁶ British Columbia Environmental Assessment Office website; http://www.eao.gov.bc.ca/about_eao.html.
- ⁷ These settlements and communities are: (1) City of Terrace, (2) Thunderbird; (3) New Aiyansh; (4) Aiyansh; (5) Cranberry Junction; (6) Meziadin Lake; and (7) Bob Quinn Lake
- ⁸ The Mining Association of British Columbia website: <http://www.mining.bc.ca/index.htm>.
- ⁹ The Association of Mineral Exploration of BC: <http://www.amebc.ca/>
- ¹⁰ Northwest power Line coalition: <http://www.highway37.com/s/Home.asp>
- ¹¹ The Mining Association BC website: http://www.mining.bc.ca/about_us/who_we_are.htm
- ¹² The members listed on the website of the Northwest Power Line Coalition (and its predecessor) are always changing. <http://www.highway37.com/s/Home.asp>
- ¹³ “Corporate Donors ask BC Liberals for Half-Billion-Dollar Handout,” Dogwood Initiative Bulletin, Feb 20, 2007: <http://www.dogwoodinitiative.org/inthenews/cooperatedonorhandout/view?searchterm=transmission%20line>
- ¹⁴ BC Government news release, October 1, 2007: http://www2.news.gov.bc.ca/news_releases_2005-2009/2007OTP0146-001216.htm
- ¹⁵ BCTC website: http://www.bctc.com/community_engagement/project_consultation/nw_trans_line_project/, BC Government news release, October 1, 2007
- ¹⁶ BCTC website: http://www.bctc.com/community_engagement/project_consultation/nw_trans_line_project/ntl_schedule_key_milestones.htm
- ¹⁷ Simpson, Scott “Collapse of Galore mine project leaves transmission line in limbo”, Vancouver Sun, November 28, 2007: <http://www.canada.com/vancouversun/news/business/story.html?id=12ec5fd0-604c-4758-83d6-6859792efdf8>

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- ¹⁸ “Miners up the ante in power line push”, Terrace Standard, May 14, 2007: http://www.bclocalnews.com/bc_north/terracestandard/news/18865364.html. Also “Northwest Power Line Coalition Confirms Study”, March 28, 2008: <http://www.highway37.com/s/NewsArticles.asp?ReportID=294032& Type=News-Articles& Title=Northwest-Power-Line-Coalition-Confirms-Study>
- ¹⁹ Galore Creek, NovaGold website: <http://www.novagold.com/section.asp?pageid=3358>
- ²⁰ “Update #2”, Northwest Power Line Coalition, May 15, 2008: <http://www.highway37.com/s/NewsArticles.asp?ReportID=301785& Type=News-Articles& Title=Update-2-Northwest-Power-Line-Coalition>
- ²¹ Personal communications with Dogwood Initiative staff and colleagues.
- ²² BCUC process is required unless Cabinet directs otherwise under Section 3 of the *Utilities Commission Act*.
- ²³ BCTC website: http://www.bctc.com/community_engagement/project_consultation/nw_trans_line_project/environmental_assessment.htm
- ²⁴ A more complete description of all of these areas for potential project impact can be found in BCTC, *ibid*, pp. 7-2 to 7-7.
- ²⁵ Draft TOR for NTL project: http://a100.gov.bc.ca/appsdata/epic/documents/p299/1195000448303_20c2171eddbdf49548159a9948913dc5c.pdf
- ²⁶ BCEAO Section 11 Order, November 12, 2007: http://a100.gov.bc.ca/appsdata/epic/documents/p299/1195256033616_46f1987d50684774b44dbb6e78438c7e.pdf
- ²⁷ Section 3 of the *Utilities Commission Act*.
- ²⁸ Personal communication with BCUC staff by both Dogwood Initiative staff and colleagues from other organizations.
- ²⁹ Phillips, Courtenay “NTL Project Briefing Document”, 2007, p.47
- ³⁰ BCTC, *ibid*, pp. iii, 6-1, 6-2.
- ³¹ BCUC website: <http://www.bcuc.com/Hearing.aspx>
- ³² Phillips, *ibid*, p.13
- ³³ BCTC, *ibid*, pp. 7-1, 7-2.
- ³⁴ Phillips, *ibid*, p.47

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