

### **III. Omitting of a basic Principle in the hearing process**

West Kootenay Power (WKP), as the applicant of the subject 230 kV transmission line, has failed to inform the Commission, the general public, affected parties and individuals (property owners and renters) and registered intervenors in the public hearing process about the power lines' electropollution, (magnetic fields, electric fields, coronas, harmonics, transients, stray-voltage, micro/radio waves) and their impact on **legal issues**, and to address these in their application, including in their **Environmental Screening Report** (Hearing, Exhibit 2).

As stated in **Section I.4**, line 13-17, (this submission), I found the Acres Environmental Assessment biased, and the Commission has not organized an independent assessment according to the Environmental Assessment Act.

#### **III.1. VIOLATION OF CONSTITUTIONAL AND COMMON/CIVIL LAW RIGHTS**

**III.1.1** In order to understand the effect of electropollution and their radiating emissions on the CONSTITUTIONAL, COMMON/CIVIL LAW RIGHTS of affected people and parties, one needs to be aware that power lines' electric forces' emission (here: **magnetic fields, electric fields, stray-voltage, ground currents, coronas, harmonics, radio&micro-waves**, all involved with power lines) is similar in many respects to X-ray radiation. Both physical forces are invisible, odorless, tasteless and silent. The forces are transmitted by radiating energies that travel distances and are capable of passing through the bodies of humans, animals and plants that can cause harm. These forces can pass objects as well and induce electrical currents on conductive structures like vehicles, metal barns, fences that in turn can cause electric shocks upon touching them.

**III.1.2.** Electric fields are getting concentrated in the conductive human bodies, allowing the field to carry the created current to earth, parallel to the electric field lines. Magnetic field induce circular currents perpendicular to the magnetic field lines. The fields are oscillating at 50/60 Hertz (Hz) so that the induced currents within our bodies are also oscillating at these frequencies!

**III.1.3.** High voltage powerlines also emit radio frequency fields (noticed by the static noise on car radios as one drives under or alongside power lines. A survey of radio frequency (RF) fields from powerlines has been carried out in Italy<sup>1</sup>, where it was found that 100 to 400 kHz signals were most common. It was demonstrated that the induced current was much higher for RF signals than for 50/60 hertz signals<sup>2</sup>. Because of this much stronger coupling of the RF signals to muscular tissue than the 50/60 Hz fields it was demonstrated, that a 100 kHz field with a strength of 0.1 milliGauss induces the same current as a 1000 milliGauss 50/60 Hz field.

**III.1.4.** There is no doubt that these electric forces first have or cause physical impact-or physical invasion-, which in turn may cause multiple biological and/or biophysical effects. D. Robert Becker states in his book "Cross Currents":

*"...physics had shown that any flowing electrical current produced a magnetic field in the space around it, and that a changing, pulsing, or moving magnetic field could produce an electrical current flow in an electrical conductor placed within the field.."* [Cross Current, page 67]

*"...If the electrical current in the wire is fluctuating, the magnetic field will have the same fluctuations We characterize the field in this case on the basis of the rate, or*

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<sup>1</sup> Vignati and Giuliani (1997)

<sup>2</sup> Section 2.3, Figure 9, "Evidence that Electromagnetic fields from high voltage powerlines and in buildings, are hazardous to human health, especially to young children", Dr. Neil Cherry, 8<sup>th</sup> April 2001

*frequency, of fluctuation (for example, once per second, a thousand times per second, etc). In science we use the term hertz (Hz) rather than per second....The field fluctuating in this fashion theoretically extends out in space to the end of the universe, but decreasing in strength with distance...It is called an electromagnetic field because it contains both an electrical field and a magnetic field. Since it is fluctuating at a certain frequency, it also has a wave motion. The speed with which it moves outward is the same as light (roughly 186 000 miles per second)."* [page 68]

*"All electromagnetic fields are force fields, carrying energy and capable of producing an action at a distance....magnetic and electromagnetic fields have energy, can carry information, and are produced by electrical currents. When we talk about electrical currents flowing in living organisms, we also imply that they are producing magnetic fields that extend outside of the body and can be influenced by external magnetic fields as well."* [page 69]

**III.1.5** With a simple multi-meter, a handheld probe, and magnetic coil it can be demonstrated quickly and everywhere, that by approaching power lines and other electric facilities, that i.e.

- a) due to their increasing electric and/or magnetic fields' physical impact someone's body voltage is increasing
- b) the magnetic field expressed in milliGauss -however read as a function of the electric current induced in the coil by the magnetic fields- is increasing, the closer someone walks or lives to power lines and other electric facilities.

**III.1.6.** Property owners and residents have the right to be free of **trespass** of these invisible physical (here: electric) forces and their invasion.

The September/October issue 2001 of "Microwave News" indicates that WHO (Repacholi) is again recommending "prudent avoidance." In the case of persons living in close proximity to powerlines/cell towers, it is "impossible" to "avoid" exposures to EMF's. Obviously, persons living in such situations are, in fact, having to endure "an unavoidable trespass".

### **III.2. Definition of trespass:**

"trespass" is an *"encroachment or intrusion or infringement"* (The Random House Dictionary), *"a legal action or damages resulting from this or any detrimental act or any practice which damages in the slightest degree the property, or interferes with the owner's or occupiers' right of possession"* (Webster's New Twentieth Century Dictionary, second Edition).

*"A trespass is any entry upon or above the surface of the real estate of another without the permission or invitation of the person lawfully entitled to possession of the real estate."*(Colorado Jury Instructions 3d, Chapter 18: Trespass to land).

"trespass" is the entry of measurable amounts of electromagnetic radiation pollution (here magnetic fields, electric fields, stray-voltage, ground currents, harmonics, radio&micro-waves) emitted/caused from present and proposed power lines and transformers above and/or in the surface of someone's affected real estate.

*"Trespassers are liable to landowners for the reasonable cost of restoring or repairing the real estate (if possible) and the difference between the reasonable market value of the real estate before the trespass and after the repair"* (Colorado Jury Instruction 3d, Chapter 18:2).

### III.3. CIVIL ASSAULT

**III.3.1** If someone keeps adding salt to the fresh water beneath a private property, that would be creating a continuing abatable nuisance and trespassing on that private property.

If someone hits another person, that would be assaulting and battering that person and the assaulter would be prosecuted even if he did not cause covering bruises because the assaulter has touched the person without consent.

If someone radiates a person with enough power physically impacting and/or invading) that it changes the biological functions and doing so without the person's knowledge and/or consent, that is an assault. It is certainly trespass on the person's body and property.

**III.3.2.** WKP does not have the right to assault affected property owners and residents with their electric forces' emissions. The elements of civil assault to WKP and the effected people are/will be as follows:

- a) WKP acts with the intent of making contact with the person (with their electromagnetic radiation emissions), and
- b) These affected people are placed in apprehension of imminent contact with their persons by conduct of WKP, and
- c) Such contact is or appears to be harmful or offensive.
- d) Negligence and/or nuisance would apply as well to electric forces emissions.

The movement of electric forces from the lawful utility corridor to lands outside of that corridor constitutes trespass or nuisance; both are torts. Having the right to transmit power within a given corridor does not carry with it permission or the right to transmit something dangerous or capable of harm beyond the perimeter of that corridor.

**III.3.3.** In case owners and residents, public institutions and recreational parks are being exposed to electromagnetic radiation, **at levels that have not yet been declared safe,** constitutes a violation of the personal property and common law rights of these affected people. These affected parties will experience **personal injury, trespass, civil assault, civil battery and a taking of their property rights, if -ignorantly, arbitrarily, wantonly willfully and without due process of law.**

A **civil battery** occurs, when/if WKP acts with the knowledge that such contacts with the person of another would result. And resulted in a contact with that person and such contact was/is/has been found –even- at a later time- to be harmful or offensive.

Human bodies involuntarily exposures to electrical forces' radiation is an inherently dangerous activity. Operating in inherently dangerous activity means that WKP must exercise the highest possible degree of skill, care, caution, diligence and foresight with regards for that activity, according to the best technical, mechanical and scientific knowledge and methods which are practical and available at the time. The failure to do so is **negligence.**

### III.4. VIOLATION of CRIMINAL LAW RIGHTS

**III.4.1** If someone intentionally/knowingly hits a person...it's an assault and does bodily harm to that person.

Either one of the mentioned electric forces can be a force, a component of simple assault, and are most likely a weapon, an element of some more serious assault charges, such as causing bodily harm. Power line electric forces' impact in their environment past the utilities encroachment is physical attacks, in another word, are assaults causing bodily injury. Magnetic fields are physically attacking, they do induce currents in conductive materials, including human bodies, animals and plants. Similar refers to the other electric forces.

**III.4.2.** Assault, bodily harm and weapon go hand in hand along with electropollution and cause a violation of criminal law rights, i.e.:

**III.4.2.1** "Assault": according to the Martin's Yearly Canadian Criminal Code (CCC): "**A person commits an assault when a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly.**" (CCC, S 265 (a)).

**III.4.2.2** "Bodily harm": according to CCC : "**bodily harm means any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature;**" (CCC, S. 2.)

**III.4.2.3** "Weapon": "**weapon means any thing used, designed to be used or intended for use (a) in causing death or injury to any person, or (b) for the purpose of threatening or intimidating any person**" (CCC, S.2)

### **III.4.3. Other violations with the Criminal Law**

Other terms of the Criminal Law that can apply with the mentioned electropollution are:

**III.4.3.1** "Intimidation": "*Every one who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he has a lawful right to do, or to do anything that he has a lawful right to abstain from doing, (a) uses violence or threats of violence to that person or his spouse or children, or injures his property...*" (CCC, S 423 (1))

**III.4.3.2** "Defense of Property": "*Every one who is in peaceable possession of personal property, and every one lawfully assisting him, is justified (a) in preventing a trespasser from taking it...*" CCC, S.38, (1)

**III.4.3.3** "Mischief": "*Every one commits mischief who willfully (a) destroys or damages property; (b) renders property dangerous, useless, inoperative or ineffective; (c) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property; (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.*"  
*Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and liable to imprisonment for life*" (CCC, S. 430, (1), (2))

**III.4.3.4** "Common Nuisance": "*Every one who commits a common nuisance and thereby (a) endangers the lives, safety or health of the public, or 9b) causes physical injury to any person, is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.*"(CCC, S 180, (1))

**III.4.3.5** "Criminal Negligence": "*Every one is criminal negligent, who (a) in doing anything, or (b) in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons*". (CCC, S 219. (1))

**III.4.3.6** "Causing Bodily Harm by Criminal Negligence" : "*Every one who by criminal negligence causes bodily harm to another person is guilty of an indictable offence and liable to imprisonment for a term not exceeding the years...*" (CCC, S 221)

**III.4.4** As stated elsewhere in this submission, it is to be clarified

**III.4.4.1** whether the Commission's jurisdiction is limited by other jurisdiction on local and regional governmental level,

**III.4.4.2** whether the Commission's jurisdiction can adjudicate property and personal/private rights and torts related to those rights with regards of the 230 kV transmission line project,

**III.4.4.3** whether a taking occurs, when property owners is called upon to sacrifice economically beneficial uses of their real property, or interference with property can be characterized as a physical invasion by the power company's project,

**III.4.4.4.** whether components of electropollution, like electric and magnetic fields can cause intangible invasion/intrusion upon private property, which then interfere with the use and enjoyment of the private lands,

**III.4.4.5** whether the invasion of electropollution constitutes damaging private property for public use without just compensation,

**III.4.4.6** whether in proposed project causes elements for the tort of trespass, which are a physical intrusion upon the property of another without the proper permission from the person legally entitled to possession of that real estate, and

**III.4.4.7** whether intentionally entering the land possessed by someone else, or causing a thing or third person to enter the land –as will apply to the proposed project- the applicant would become subject to liability for trespass, whether or not he caused harm to any legally protected interest of the landowner,

#### **IV Omitting of a non-legal basic Principle in the hearing process (Non-EMF-Health related)**

**IV.1.** In the 2000 Public Hearing certain points that I addressed in my written submission have been deferred from the policy panel to the technical pane, and later during the course of the hearing the Commission Counsel has not brought these before the technical panel: the question of the existence of the other transmission lines' physical (or electric forces) specifically: stray voltages, ground currents, harmonics, radio and microwaves, coronas<sup>3</sup>..., all of which have legal impacts as well, as stated above. Omitting of this basic principle calls also for reconsideration of the Decision.

**IV. 2.** Also addressed in the hearing by me was property devaluation<sup>4</sup>, which was deferred by the technical panel due to lack of expertise / expert. The technical panel and the Commission Counsel was not prepared to invite an independent real estate appraiser or expert, although I indicated in earlier submission (before the hearing) that I would address these points in the hearing.

**IV.3.** Same refers to WKP liability insurances<sup>5</sup>.

**IV.4.** The issues addressed in sections **IV.1 – IV.3** raised again in my final argument (April 7, 2000), have then not been considered or dealt with in the Commission's Decision, dated June 5, 2000, which is also an omission of a basic principle justifying to apply for Reconsideration of the recent Decision (October 25, 2001).

#### **V CONCLUSION and APPLICATION for RECONSIDERATION**

*From Hans Karow*

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<sup>3</sup> Transcript, Page 180/181, lines 16-26, and lines 1-10 respectively

<sup>4</sup> Transcript, Page 185, lines 7-23

<sup>5</sup> Transcript, Page 185/186, lines 24-26, and lines 1-11 respectively