

A Matter of
TRUST

THE ROLE OF COMMUNITIES
IN ENERGY DECISION-MAKING

Wuskwatim
Hydroelectric
Facility



Case Study

Nisichawayasihk Cree Nation
Manitoba

CANADA WEST FOUNDATION & UNIVERSITY OF OTTAWA

We would like to thank those who agreed to be interviewed for this study. Their insights and contributions were invaluable in preparing this report.

As is customary, any errors of fact or interpretation remain the sole responsibility of the authors.

Copies of the *A Matter of Trust: The role of communities in energy decision-making* report and the six case studies are available for download on the Canada West Foundation and Positive Energy websites.

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INTRODUCTION COMMUNITY CONTEXT

The case study focuses on Manitoba Hydro and Nisichawayasihk Cree Nation's (NCN) Wuskwatim project.

Project overview

The Wuskwatim project was the first time a utility company and an Aboriginal community entered a partnership to develop a major generating station, where NCN would purchase 33 per cent of the project's shares. Primary Wuskwatim components include the 200 MW generating station and dam on the Burntwood River at Taskinigup Falls, transmission lines to the provincial power grid and an access road. Construction of the generating station ran from 2006 to late 2012 at a cost of \$1.3 billion. The \$300-million transmission line was a separate Manitoba Hydro project.

Manitoba Hydro: The province's major energy utility, this Crown corporation was established in 1949. Manitoba Hydro has 14 hydroelectric generation stations on the Winnipeg, Saskatchewan, Nelson and Laurie rivers that produce approximately 5,000 MW.

The Nisichawayasihk Cree Nation (NCN) is based in Nelson House, Man., 80 kilometres west of Thompson. About 4,600 members of the NCN live in Nelson House, South Indian Lake, Leaf Rapids, Thompson, Brandon and Winnipeg.

In the 1970s, Manitoba Hydro constructed the Churchill River Diversion, which had a great impact on the First Nations community because it led to increased flooding. This affected hunting, fishing, trapping, and sacred sites. The NCN claims Manitoba Hydro and the government took few steps to consult with the community before constructing the site.

TIMELINE

NCN starts negotiating with MB Hydro	Environmental impact statements submitted	Agreement in principle is signed	Regulatory hearings take place	Agreement signed & construction starts	Agreement review starts	Revised supplementary agreement	Construction completed
1997	2000	2001	2004	2006	2009	2011	2012

The Development and **APPROVAL PROCESS**

In 1996, Manitoba, Canada and Manitoba Hydro signed the Northern Flood Implementation Agreement. A key feature of this agreement is the process for future development – if Manitoba Hydro wants to build new projects that will affect the community, it has to reach compensation arrangements with the NCN before it can build.

First Nations input was critical during the design and planning phase of the project, which included combining traditional knowledge with scientific knowledge during the environmental assessment studies.

“The people [NCN leadership and Manitoba Hydro] involved were working very hard to make it work... It was they, and not the regulator, who established an engaging’ environment.”

(Anonymous 3, consultant group)

NCN’s participation was co-ordinated through its Future Development Team that considered economic benefits to the NCN through jobs, training and business opportunities during construction, and long-term benefits through sustainable income from power sale. In 2001, the agreement in principle was signed with Manitoba Hydro that would provide an equity partnership in the project if the NCN elects to exercise that option.

REGULATORY PROCESS

In Manitoba, generation projects undergo both a federal and provincial regulatory process, under the Department of Fisheries and Oceans (DFO) and the Clean Environment Commission (CEC).

The Manitoba Public Utilities Board (PUB) regulates the rates charged by Manitoba Hydro and was initially responsible for a public review process with respect to the “justification, need for the project, and alternatives to the proposed projects.” This process was cancelled in April 2003 (Energy Manitoba, 2004). The needs process was merged into the CEC process, with two PUB members on the panel.

Manitoba Hydro’s projections showed that Manitoba domestic demand for new power generation for Manitobans is not required until 2020. By building the Wuskwatim station, Manitoba Hydro expects exporting power to the U.S. will provide the additional revenues to justify the project.

CEC hearings were well attended by NCN citizens, other Indigenous people, municipal governments, environmental groups, businesses and other organizations. In all, 32 days of hearings were held over four months, from March 1 to June 9, 2004. CEC issued a report of its recommendation to the Manitoba Minister of Conservation on Oct. 4, 2004.

Under the federal process, the DFO undertook and submitted a comprehensive study of the Wuskwatim Generation Project to the Minister of the Environment and to the Canadian Environmental Assessment Agency. The study was done as part of a co-operative environmental assessment with the Government of Manitoba. It concluded that the project “is not likely to cause significant adverse environmental effects.”

LOCAL BENEFITS

There were a number of local benefits for the community:

Clean, renewable energy

The Wuskwatim Generating Station produces clean, renewable energy that adds to the domestic supply in Manitoba and earns revenues from the export market.

Economic Benefits

The partnership projected that NCN's 33 per cent ownership of Wuskwatim would produce the revenue needed to pay back the loans from Manitoba Hydro. The NCN would also have receive a minimum of \$3 million annually for community programs, including revenues, water power rental and dividend loans (NCN, 2016a).

Wuskwatim Power Limited Partnership (WPLP) projected that there was to be \$5 million in wages for community members for work on the project, and \$100 million in revenues over the initial 25-year term.

Contracts

Manitoba Hydro provided management and construction services to WPLP which jointly owns the generating station. Wuskwatim provided opportunities for NCN businesses and joint venture partnerships, which received first preference on contracts for certain

parts of the project without the need for competition. More than \$100 million in contracts were negotiated for such benefits as access road construction, catering and security (NCN, 2016a).

Jobs and training

There was a general concern about the economic growth in the northern Manitoba area. From the regulatory hearing documents, there was a sense that benefits from previous projects had flowed south, leaving northern Manitoba residents out. The desire in Thompson and the NCN was to expand on business opportunities and employment opportunities for the community. The generating station was one of the province's largest construction projects and provided hundreds of jobs over six years.

“NCN is under pressure to meet the needs of a rapidly growing young population. There is a critical shortage of jobs, housing, infrastructure and funds to support higher education opportunities. These challenges are felt directly by the youth of NCN and we will inherit the responsibility for meeting these challenges. To us, one of the best opportunities is the Wuskwatim project, which we strongly support despite our First Nation's negative history with past hydroelectric projects.”

(NCN youth, regulatory hearing document)

The NCN felt adamantly that it had built a new model for a sustainable First Nation economy that protects the Cree culture but also offers real growth opportunities to the community members.

Targeted training opportunities were in place starting in 2003 to ensure NCN members had the skills they needed to take advantage of the project opportunity.

The Atoskiwin Training and Employment Centre of Excellence (ATEC), was secured for the purpose of training NCN citizens for jobs on Wuskwatim. More than 300 NCN community members received training through ATEC since 2003 (NCN, 2016a), and \$11.5 million was to be invested in training and employing NCN members on the project.

Opponents of the project feared not enough benefits had been secured for the NCN, and that the promised benefits would not be fulfilled. Participants highlighted that some NCN members and other First Nation community members thought that NCN would have to wait a long time to realize returns, or if the project was unsuccessful be left with enormous amounts of debt. The Peace of the Braves agreement, signed between the Grand Council of the Crees of Northern Quebec and Hydro Quebec, was cited as a true resource sharing model.

PERSPECTIVES & ISSUES

The community was divided on the project.

“This was a divided community. The chief and council who made the deal had other members who thought they shouldn’t make the deal. The councillor was responsible for testifying on behalf of NCN, his sister was leading the opposition and cross-examined him during the hearing. When they finished, they hugged.”

(Anonymous 3, consultant)

Of the numerous issues raised during the hearings, a recurring theme was the legacy of mistrust, adverse impacts from previous hydro projects and promises broken by Manitoba Hydro. This sentiment was strong, not only within NCN, but also in other communities.

“I want to begin by stating that I am opposed to this project in its current form because I do not trust Manitoba Hydro. How can I trust Hydro when they have left a trail of unfulfilled promises and devastation? How can we be expected to trust Hydro when the shiny beads they offer to entice us could end up destroying us again? Various entities are claiming that the community supports this endeavour and the consultation process has been cited as a part of it. I know for a fact that there are many who are wary of this deal, myself included.”

(NCN member, regulatory hearing document)
(MCEC, 2004a).

“We must recognize and understand what has been done and its impacts before we can have confidence in future development. We feel that a thorough review of past and continuing impacts of the Hydro development in northern Manitoba should have been done even before a new hydro project was proposed... Manitoba Hydro should not be allowed to continue to make hundreds of millions of dollars on the pain and suffering of others who [have been] affected.”

(Angus, South Indian Lake Association, Regulatory hearing document) (MCEC, 2004a).

Environmental concerns

Environmental concerns included an expectation that debris would increase in the water. This would impact the water quality, and moose and caribou hunting. Beaches could be lost and land eroded, and increased silt would affect the fish and fishing environment.

The elders in the community were extremely concerned about the quality of drinking water.

“During a key community meeting at Nelson House, the opposition within the community were handing out water to those representing the project and challenging them to drink it because it came straight from the lake. Nobody drank it.”

(Anonymous 3, consultant)

After the construction of the project, numerous fish habitat enhancement projects were implemented by the Wuskwatim Power Limited Partnership to compensate for fish habitat lost as a result of constructing the Wuskwatim Generating Station.

Flooding

One of the biggest concerns was the risk of flooding of the rivers that feed the hydro dams and the environmental and community impacts of the flooding. This concern was linked with historical hydro projects in the region, specifically the Churchill River Diversion. The project caused heavy flooding, which greatly affected the community's welfare and was done with little consultation. There was a history of distrust in the community for industry proponents.

After numerous discussions with the NCN, a low head design (i.e., low fall of water) was chosen to minimize the amount of flooding to less than half a square kilometre.

"We did a lot of work to demonstrate that the impacts of that could be minimized and made acceptable to them, in good part by working with them. One strategic decision we made was to change the fundamental design of the project from a fair bit of flooding to no flooding that made the project smaller but made a huge difference to NCN and the general environmental acceptability. Once we did that, and involved them in the collaborative planning, there was a decrease in suspicions and a greater willingness to work with us."

(Ed, former proponent)

Concerns related to Indigenous title and treaty rights

There were broader tensions at play between the NCN and the South Indian Lake relating to treaty rights. Some regulatory hearing participants wanted the treaty and Indigenous issues resolved before the Wuskwatim project went forward. The South Indian Lake members wanted their concerns addressed and to directly receive gains from the project. The NCN position was that early proposals of the project would include NCN members living within the Resource Management area. This would by default exclude the members living in South Indian Lake. The South Indian Lake cited Section 8 of the agreement, which said, "All members would be included in future Hydro developments." (MCEC, 2004b)

"Canada has a fiduciary obligation to us through our treaty rights that we have those rights and they extend, yeah, maybe to the band membership and NCN. But I tell you this, Valerie, it was not our choice to be NCN members. And I don't hold no disrespect to NCN. It was the white man at the beginning of treaty that put us together. And what we're trying to do is try to unravel that."

(Chris, regulatory hearing document) (MCEC, 2004b).

"What has become of this? You pit us against each other [NCN against South Indian Lake]. Is that fair? I don't think so. What South Indian Lake wants, there are seven points at the end of our presentation of what we request. I don't want to fight. I don't want to fight. I want to go on. I want to help my people. I want them to become strong."

The Métis Federation participated in the hearings. The federation stated that since the Métis have a distinct culture, way of life and economy, it is important to have a separate and full consultation to determine the ways the Métis will be affected by the project.

“NCN were very surprised that other First Nations didn’t say that this is a good project and recognize how hard they worked to get there. They were quite taken aback that they were soundly criticized, by the politics of the north, by [other communities] that didn’t have a deal like this and environmental groups and people from universities that had views about how NCN should be going forward.”

(Anonymous 1, consultant)

Impact on Indigenous way of life

A concern for some NCN members was the impact of the project on their traditional way of life. Members were concerned that majority of the costs are borne by the community, especially the hunters who rely on the land and water to sustain a traditional way of life.

However, the youth in the community held another perspective: that the NCN was a modern First Nation that incorporated both traditional Cree culture and modern society.

“We are a modern First Nation, with a fast-growing population of young people who want to maintain our Cree culture, but who also have dreams of successful lives as teachers, dentists, doctors, lawyers, engineers, artists, musicians, business leaders and tradespeople.”

(NCN, 2004)

“Ever since we were young, we have heard their [the elders’] stories of the untouched lands and waters that were able to provide for their spiritual and physical needs, and how they lived in harmony with Mother Earth as part of their traditional ways. While we haven’t experienced their hardships, we feel their pain. We hear the anger and despair in their voices when they talk about Wuskwatim. We deeply respect the concerns of our elders and we are thankful we did not have to experience the changes and disruptions they did. Still, our elders need to appreciate that our generation no longer survives on traditional economy of hunting and fishing.”

(NCN youth, regulatory hearing document)

There was a concern in the community about the close proximity of construction to burial areas. Traditional knowledge was used to help site the construction camp and access road.

REGULATORY PROCESS

There was overwhelming agreement that there is a general decline in deference to, and trust in, public authorities. Interview participants felt that, while some of the senior representatives trusted the regulator to make a fair decision, a significant portion of the community did not.

“I think some of the more senior members in the community did [trust the regulator] but I think there was also a lot of distrust. Some community members thought this will get approved no matter what.”

(Ed, former proponent)

This was reflective of the general distrust in regulators as well as a feeling that the non-Indigenous population will get their way and that the provincial government is biased toward approving the project.

“Thirty years earlier, there had been objections by NCN and other First Nations communities about past projects and they happened anyway. And those projects were damaging, there’s no question. So you look at that: We said those projects were damaging and they were and went forward. The same thing will happen again.”

(Ed, former proponent)

Accessibility (location and travel costs) was noted as a barrier in the ability of community members participating in the regulatory process. While a couple of hearings were held in Thompson and The Pas, most took place in Winnipeg.

“[We are] not happy that those hearings are spending only two days in Thompson. More time should be spent in northern Manitoba to allow the people who are affected by hydro development and have suffered at the hands of Manitoba Hydro to be part of the process.”

(Regulatory hearing document) (MCEC, 2004a).

Several interviewees stated that community understanding of the technical and legal terms, rules and procedures for regulatory processes is low.

“They could understand the hearings because they could hear and see things but the broader process was foggier to them.”

(Ed, former proponent)

There was some confusion in the community about the overlap between the EA process and the consultation under Section 35 over the consideration of impacts on Indigenous and Treaty rights.

“The hearing process itself is strange for regular people. So don’t expect to become engaged at a regulatory hearing.”

(Anonymous 1, consultant)

Interview participants emphasized that Indigenous culture and language should be taken into account when forming the regulatory process. While there were some attempts to have open and closing prayers and include questions in the Cree language, they said more could be done.

Interview participants noted that the PUB process of needs assessment is more formal in nature. The community considered the formal structure to be problematic.

“The adversarial nature of a hearing is counter to how indigenous communities work.”

(Anonymous 2, proponent)

“There was a federal regulatory process and a provincial one. And, in this case, to make things more complicated they added another review, usually done by the Public Utilities Board. There was a lot of legal representation with formal cross-examination and presentations. The tenor of the process is not friendly at all to the average person and a bit of a mystery as to who is involved and what the scope is of the decision they are making.”

(Anonymous 1, consultant)

OUTCOME

The Project Development Agreement (PDA) was signed in 2006, after a vote by members of the community. NCN would purchase a 33 per cent share in the project. Environmental licences and approvals for construction were received, and construction began. On-site, cross-cultural awareness workshops were held, and counselling was provided for workers. A number of ceremonies, such as feasts, sweat lodge ceremonies, and water ceremonies, were conducted before and during the construction period. When human remains or cultural materials were found during consultation, work was halted to conduct proper ceremonies (NCN, 2016b).

The forecast cost of project was \$800 million but actual costs reached \$1.3 billion (NCN, 2015a). After several delays, construction was completed in 2012.

Factors related to changes in global economic and energy markets (the shale gas boom) meant the project did not achieve projected profits. A number of workers not from NCN, such as workers from Quebec, enjoyed benefits, an issue of concern for the NCN community (NCN, 2009). A PDA review involved several rounds of consultations with NCN members and resulted in a supplementary agreement which included additional investment options and clarification of operational jobs. Under the PDA 2, NCN committed to invest \$22 million (less than the original commitment), the federal government grant for \$4 million and a \$10 million loan from Manitoba Hydro (NCN, 2015b).

Assessment against THE FRAME

Context

A key learning from this case was the need to acknowledge the legacy of distrust lingering from past developments. It took Manitoba Hydro and NCN a great deal of time to overcome the overwhelming hurt, anger, skepticism and distrust.

“Ten years earlier, we didn’t have a good relationship with the local people and did not have collaboration of any kind. And we were seeing this was not an effective way to move projects forward in the modern era and we had to do something different. We decided that, besides consultation and benefits, an equity partnership was something worth trying.”

(Ed, former proponent)

Based on a suggestion from NCN leaders, Manitoba Hydro formally apologized to the NCN during the Wuskwatim project. The five years it took to build a relationship laid the groundwork for the two parties to reach a project agreement.

Based on the literature and interviews in the interim report, the largest unresolved policy issues that are brought up in regulatory hearings are concerns about climate change and rights of Indigenous Canadians. This case study was an example of how broader treaty and Indigenous rights concerns and issues were a significant part of the regulatory process.

Values

Through secondary research done for the project, it is clear the community was divided over the project. Some looked at it as a development opportunity for the NCN while others opposed it because of environmental and social concerns.

“I am not opposed to development and economic growth, I think that it would be great if we, as a community, could improve our economic and social situation. I am, however, concerned with the current processes and mechanisms associated with the Wuskwatim project. I respect what the leadership is trying to do for the community, but I am not entirely convinced that this is what is best for us as NCN people... NCN will have to come up with \$ 1 million before construction...where will that come from?”

(MCEC, 2004a)

The case study affirms that there needs to be an alignment of long-term interests and shared values between the proponent and the community. For Indigenous communities, a focus on tangible long-term benefits for the youth is an important component.

The interim report argued that values, attitudes and interest of a given community should be accounted for and accommodated. This case study presents some learnings as to how that can be done. The integration of traditional knowledge and the coming together of traditional ways and western science was woven throughout the planning and implementation process.

Information

It was noted that NCN leaders (chief and council) were responsible for disseminating information about the project to the community. A lot of information was available but there was a sense it was difficult to comprehend. Project proponents and the regulator made some effort to translate portions of the EIS to Cree for the NCN elders to review.

“I possess a university degree and I’m having a hell of a time understanding what is contained in this information. Can you please tell me how my grandmother, who doesn’t speak or read English, is to understand what is going on? How can my aunts, uncles and cousins begin to comprehend what is written or even spoken? You need degrees of all sorts to understand what is written down, presuming you can read it in the first place.”

(community member, regulatory hearing document)
(MCEC, 2004a).

Engagement

The interim report found that effective and genuine forms of engagement and participation throughout the decision cycle is critical. This case study utilized a joint decision-making process, which was key in mitigating the high levels of distrust.

“At first there was extreme distrust because of the legacy of the previous projects. But over time, by working openly and forthrightly and demonstrating that we were truly being collaborative, there was an increase in trust, certainly by the representatives...and gradually some of the community members as well.”

(Ed, former proponent)

“It wasn’t only that the environmental concerns were being addressed but that they had a role, an influence, in the decision-making around the project. ...The joint ownership was really important, it is not only about getting some dollars but a sovereignty and pride of ownership issue. A sense that we are doing this, instead of someone imposing [the project] on us and giving money to make up for it.”

(Ed, former proponent)

A unique feature of this case was that the engagement did not stop with the construction of the project. There was ongoing engagement with NCN about the monitoring and evaluation process.

“With Wuskwatim, there was an engagement of the local First Nation community in the process of monitoring – environmental and socio-economic and also from the perspective of traditional knowledge.”

(Anonymous 1, consultant)

The project had a community-based veto process. The first vote took place when the agreement in principle was drafted. It was supportive of the NCN negotiating an agreement with Manitoba Hydro. The second vote took place in 2006. NCN Members voted (62 per cent in favour) to ratify the PDA. The council also conducted consultations with the community.

“We voluntarily promised to them that if they as a community voted to not proceed with the project we would stop working on it. We didn’t say we would stop forever and ever, but that we would stop and put it aside and visit it again in the future. That made a big difference to the community and gave them a lot of trust.”

(Ed, former proponent)

It is important to note that this was not a linear project and there was one main community involved. The costs of replicating such a thorough process for other projects, specifically linear ones, would be significant. However, the principle of collaboration can and should be applied to other projects, as well as regulatory processes.

“It added a lot of cost, effort and management involvement because having them do their own assessment made the process more complicated. But it was worthwhile in the end.”

(Ed, former proponent)

One challenge highlighted by interviewees was the lack of technical, legal and administrative capacity in the NCN.

Even though Manitoba Hydro and the NCN pride themselves on the consultation and engagement process they undertook with the Wuskwatim project, several regulatory hearing participants felt the consultation process was lacking. Concerns with the consultation process affirmed the interim report finding that engagement needs to be face to face at all times.

“If consultation means having a package slipped under the door of my home or being handed a book filled with technical jargon which requires degrees of sorts to comprehend in response to my queries, then yes, to that extent, I have been consulted.”

(NCN member) (MCEC, 2004a)

The interim report argued that planning done right involves extensive citizen engagement. While this is principally the role of political actors and proponents, the regulator has a supportive role in this, as well. Participants stated that there are ways in which the regulator could have had an expanded mandate and held more pre-hearing meetings where community members could express their concerns and become better informed on the rules and process. They want some sort of interaction between the regulatory panel members and the community members so that communication is not one way.

“A process that allows some feedback on the issues and concerns raised by the community. I don’t think the law would forbid that, but administrative law would have ideas of how that could be done.”

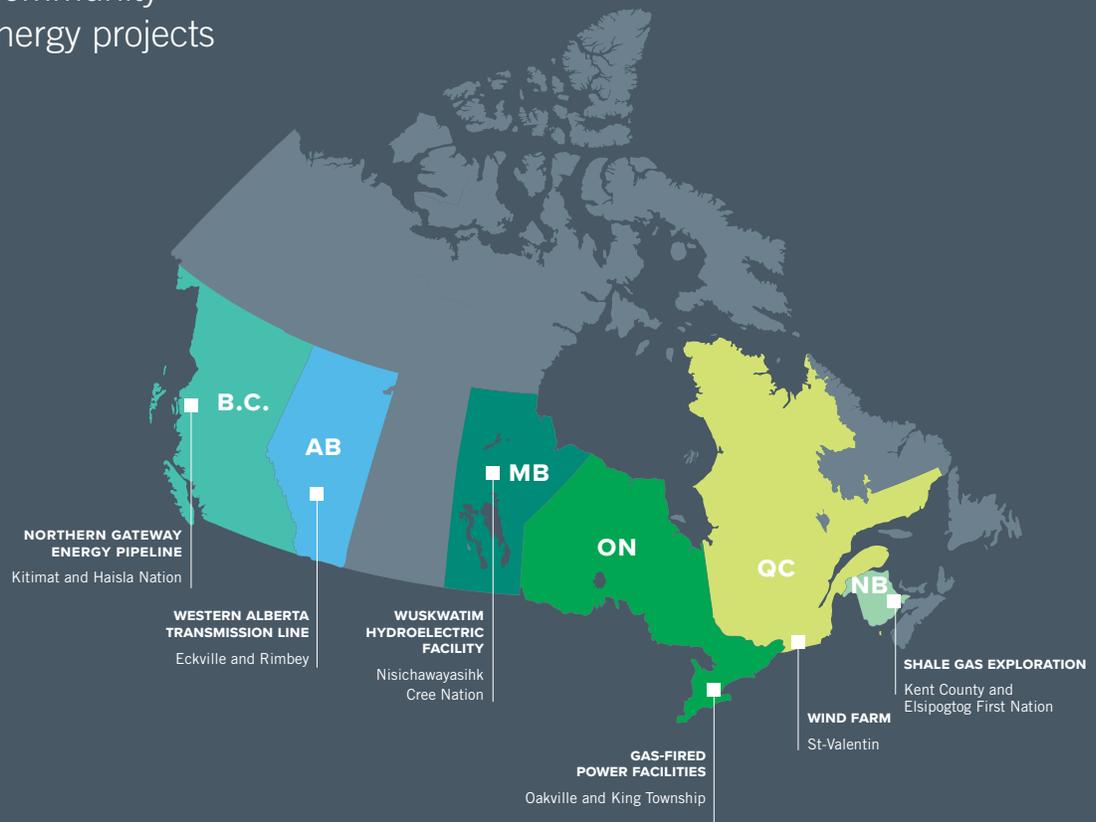
(Ed, former proponent)

CONCLUSION

Transforming the discourse

Canada has been engaged in a diverse renegotiation of our energy systems. In this time of rapid change, it is challenging to isolate specific factors that affect community confidence. A dominant theme in this case study was the importance of building and maintaining relationships. There was time and effort spent on transforming the relationship between NCN and Manitoba Hydro to overcome the legacy of distrust between the two players. The Wuskwatim case demonstrates a shift from engagement to consultation to collaboration. The partnership and co-creation model should be based on shared long-term interests and positions Indigenous communities to be key players, decision-makers and beneficiaries of energy projects.

Snapshot of community response to energy projects



Kitimat

1 in 2

support or somewhat support Northern Gateway

Eckville and Rimbey

More than **1/2**

of residents said a fair needs assessment showing the need for WATL would change their support

Nisichawayasihk Cree Nation

COMMUNITY INPUT

during design and planning led to significant redesign

Oakville and King Township

More than **70%**

were concerned about local environmental impacts

St-Valentin

THE "FLIP"

to a new proponent undermined trust in both the proponent and public authorities

Kent County

59%

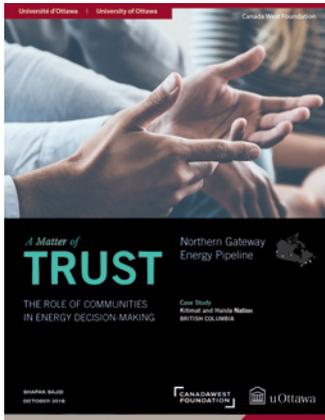
expressed low confidence in the capacity of the regulator to enforce rules

Nanos Research on behalf of the Canada West Foundation and University of Ottawa's Positive Energy project conducted surveys between July and September 2016 with 1,775 respondents to assess views within each case study community on the role of local in energy decision-making.

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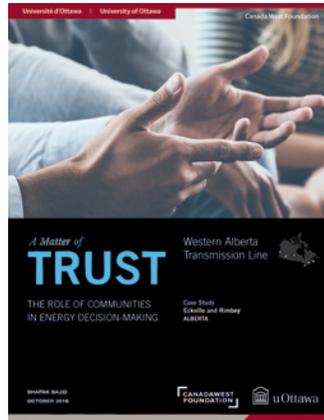
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NORTHERN GATEWAY ENERGY PIPELINE

*Kitimat and Haisla Nation
British Columbia*



WESTERN ALBERTA TRANSMISSION LINE (WATL)

*Eckville and Rimbey
Alberta*



WUSKWATIM HYDROELECTRIC FACILITY

*Nisichawayasihk Cree Nation
Manitoba*



GAS-FIRED POWER FACILITIES

*Oakville and King Township
Ontario*



WIND FARM

*St-Vaentin
Québec*



SHALE GAS EXPLORATION

*Kent County and
Elsipogtog First Nation
New Brunswick*

THE CENTRE FOR NATURAL RESOURCES POLICY
CHAMPIONS THE RESPONSIBLE DEVELOPMENT
OF WESTERN CANADIAN RESOURCES
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