



Alberta Energy and Utilities Board



MEMORANDUM OF DECISION

DUNVEGAN HYDROELECTRIC PROJECT
GLACIER POWER LTD.
EUB Application No. 2000198
NRCB Application No. 2000-1

Prehearing Conference
Joint EUB/NRCB Panel
June 16, 2001
Fairview, Alberta

1. INTRODUCTION

On June 19, 2000, Glacier Power Ltd. (Glacier) submitted an application to the Alberta Energy and Utilities Board (EUB) and the Natural Resources Conservation Board (NRCB) for approval to construct and operate a 40 MW hydroelectric facility on the Peace River upstream of the Dunvegan Bridge. An environmental impact assessment (EIA) was submitted as part of the application. Staff of Alberta Environment (AENV), the EUB, and NRCB reviewed the materials and on November 9, 2000, sent the company a request for supplemental information. Glacier submitted the additional information on March 15, 2001, at which time it substantively amended its application. The new application doubled the plant capacity to 80 MW, altered the sizes and locations of the powerhouse and weir, changed the locations of the access road and transmission line, and proposed a different design for the fish passage structures. Glacier provided further information on fish bypass structures and turbine design to AENV in a letter dated May 18, 2001. On June 7, the AENV Director of Environmental Assessment and Compliance wrote to the EUB and NRCB to say that, in her opinion, the EIA was complete pursuant to Section 51 of the Environmental Protection and Enhancement Act.

On June 16, 2001, a joint EUB/NRCB Panel (Panel) held a prehearing conference at Fairview College in the Town of Fairview, Alberta, to solicit comments from the company, government representatives, nongovernmental groups, and the public on preliminary matters to facilitate an efficient and effective hearing at a future date. A list of the parties registered at the prehearing is attached to this memorandum of decision. The Panel invited all groups and individuals who registered at the prehearing to express their views on the following matters:

- Issues to be examined at the hearing
- The appropriate scope and jurisdiction of the review
- The appropriate location for a hearing, the timing of the hearing, and deadlines for filing hearing submissions
- Procedures to be followed at the hearing
- Any other preliminary matters requiring clarification that might assist the Panel to conduct an efficient and effective hearing into Glacier's application

This report summarizes the views of participants who addressed these matters and presents conclusions reached by the Panel in response to those views.

2. ISSUES

2.1. Views of the Applicant

Glacier acknowledged that some issues associated with project impacts on fish and on the Peace River ice regime have not yet been resolved to everyone's satisfaction.

It recognized that changes in the ice regime on the Peace River could affect both the operations of the Shaftesbury ferry and the risk of flooding in the Town of Peace River. Glacier said it would present evidence with respect to criteria for ice management on the Peace River and why the current criteria might need to be changed. It suggested that the role of the Alberta/British Columbia Joint Task Force on Peace River Ice would be an important matter for the Panel to consider in evaluating the impacts of the Dunvegan project.

With respect to fish, Glacier noted that in its view there were two issues: 1) designing a functional fish ladder for fish moving upstream, and 2) finding ways to allow fish to move downstream past the dam, which it described as the "fish bypass" issue. Glacier said it was actively working on both ice and fish issues with provincial and federal government regulatory agencies, and that additional information on the fish bypass issue might be forthcoming in mid-July. It characterized the additional information as "optimizing" its application and indicated that it was prepared to go to hearing on the basis of the information it had tabled to date.

Glacier also noted that some interveners had identified other project issues, such as wildlife crossing the river, safety, and erosion and slumping in the river valley. Glacier submitted that the Panel should also consider these in its review of the project.

2.2. Views of the Interveners

Other prehearing participants agreed that the ice regime, fish, and the other issues identified by Glacier were important; they also suggested a number of others.

Alberta Environment

AENV indicated that it had not yet developed a formal position with respect to Glacier's application but agreed that the major issues related to changes in the ice regime and the potential impacts of the project on fish passage and mortality.

Federal Government

The Federal Government submitted that its interests related to the impacts of the project on upstream and downstream movements of fish and on its efforts to correct adverse impacts to the hydrological regime of the Peace-Athabasca Delta. It noted that representatives of the Department of Fisheries and Oceans (DFO), Parks Canada, Environment Canada, and the Canadian Environmental Assessment Agency would be submitting evidence at the hearing, but reported that DFO had not yet completed its environmental screening of the project.

British Columbia Hydro

British Columbia Hydro (B.C. Hydro) expressed concern that the proposed project would prompt more frequent stalling of the ice front between the Town of Peace River and Dunvegan. It noted that under the terms of the Alberta/B.C. Joint Task Force on Peace River Ice, B.C. Hydro had adopted an operating regime that minimizes ice jamming at the Town of Peace River. As a result, it was concerned that operation of the proposed project would force it to extend the duration of these controlled flows. B.C. Hydro claimed that the resulting losses of generating capacity at its Peace Canyon Dam would exceed the power output of the Dunvegan project. B.C. Hydro would then be forced to replace the lost energy with thermal generators, and this would result in considerable costs to B.C. ratepayers and a net increase in the release of greenhouse gases. Furthermore, B.C. Hydro noted that even if it implemented the controlled flow for a longer period, there could still be an increased incidence of ice-related flooding in the Town of Peace River.

B.C. Hydro also expressed concerns about the potential impact of the Dunvegan project on ice formation upstream of the B.C. border and the resulting impacts on wildlife, water intakes, and other infrastructure in the Town of Taylor. It also suggested that the cumulative effects of the project had not been adequately explored, since the potential interactions between the Dunvegan project and B.C. Hydro's proposed Site C project have not been investigated.

DC Farms

DC Farms was concerned that changes in the ice regime downstream of the proposed project would make it unsafe to operate the Shaftesbury Ferry before freeze-up and that thinner ice conditions after freeze-up would make it difficult or impossible to build a reliable ice bridge. They observed that with neither the ferry nor ice bridge operating for much of the winter, people would have to travel much greater distances to reach nearby communities. This would have a significant adverse impact on local residents and businesses.

Friends of the Peace

The Friends of the Peace (FOTP), which also represented the Canadian Parks and Wilderness Society (Edmonton Chapter), the Federation of Alberta Naturalists, and the Peace Parkland Naturalists, was concerned about potential impacts of a changed ice regime on wildlife, the incidence of fog, and icing of the Dunvegan Bridge. It said that Glacier had provided little credible evidence on fish populations and the efficacy of the proposed fishway. FOTP was also concerned about cumulative effects, the best use of the site, and the effects of slumping and erosion on the remaining native grasslands in the valley.

Fort Resolution

Representatives of the community of Fort Resolution, which is located in the Slave River delta in the Northwest Territories (N.W.T.), identified flooding, heavy metal contamination, and cumulative effects as their primary concerns. They said that any potential changes to the amount

and quality of water in the Peace River could affect the health and safety of people living downstream in Alberta and the N.W.T.

Paddle Prairie Métis Settlement

The Paddle Prairie Métis Settlement (PPMS) was concerned that the proposed project could interfere with efforts to restore July flooding in aid of rejuvenating the Peace-Athabasca delta. It noted that the Northern River Basins Study had called for a moratorium on development. PPMS was also concerned about changes in water levels and the associated slumping that can occur. It also questioned the adequacy of Glacier's public consultation efforts, noting that although the settlement has about 30 miles (48 kilometres) of potentially affected downstream shoreline on the Peace River, Glacier had never consulted the community.

Trout Unlimited

Trout Unlimited (TU) said that its major issues were the impacts of the proposed project on aquatic resources, including fish, fish habitat, and water quality. TU expressed concern about the lack of technical information concerning historical and current abundance of fish species and their use of habitat. It said that lack of such information cast doubt on the reliability of the EIA. It noted that the issue of slumping, which other interveners raised in relation to impacts on terrestrial communities, was also of concern because of potential impacts to the river. TU was also concerned about the cumulative effects of the proposed project in combination with other current and likely future activities and projects in the watershed. It questioned the adequacy of Glacier's consultation program and noted that it had not yet seen some of the reports dealing with fisheries issues.

Town of Fairview

Ms. J. Charchuk, Mayor of the Town of Fairview, reported that the adequacy of electrical power in the region was an issue. She noted that a proposal to supply the region with power from B.C. had fallen through, so the 80 MW from Dunvegan would be beneficial to northern Alberta, especially since hydropower was cleaner than coal.

D. Richardson

Mr. Richardson, a local resident and contractor, submitted that the project had merit but acknowledged the ice and fish issues. He, too, noted the potential environmental benefits of renewable hydropower when compared to alternatives such as coal-fired power generation.

J. Moskalyk

Mr. Moskalyk lives along the Peace River and suggested that the economic importance of the project to the region needed to be addressed at the hearing.

Alberta Wilderness Association

The Alberta Wilderness Association (AWA) did not attend the prehearing conference. In its written submission it echoed FOTP's concern with slumping, especially if the bedrock softened once the dam was in place. It expressed concern with the lack of information concerning fish habitat and fish populations and questioned whether the proposed fishway would be effective for the fish species found in the river. The AWA noted that AENV had designated this portion of the Peace River valley as an Environmentally Significant Area (ESA) of national importance, but claimed that the potential impacts of the hydroelectric project on the ESA and its various features had not been adequately evaluated. Another issue identified by the AWA was the potential impact of changes in the ice regime to wildlife movements in the valley.

Athabasca Chipewyan First Nation

The Athabasca Chipewyan First Nation (ACFN) did not attend the prehearing conference but did provide a written submission. The ACFN holds land reserves within the Peace-Athabasca delta, and it was concerned that the proposed project would exacerbate damage to the delta caused by existing hydroelectric projects on the Peace River. It noted that the adverse impacts of these projects on the natural flow regime had been documented in the Northern River Basins Study, which had recommended that changes be made to the operating regime of the Bennett Dam to rehabilitate the delta. The ACFN was concerned that because the project would clearly benefit from the current pattern of regulated flows, an approval of Glacier's project could interfere with efforts to implement the recommended changes in the river operating regime. The ACFN concluded that the cumulative effect of the proposed project on Peace River flows would adversely affect delta residents, who depend on the environmental stability and unique ecology of the delta.

B.C. Ministry of Environment, Lands and Parks

The B.C. Ministry of Environment, Lands and Parks submitted a letter that identified three issues it believed had not been adequately addressed in the project assessment. These included the impacts on riparian mammals of more frequent ice cover near Taylor, B.C., the need for improved confidence in forecasting the ice front movements, and the lack of a plan to compensate B.C. Hydro for lost generating capacity.

2.3. Views of the Panel

The Panel believes the following issues need to be considered in a hearing:

1. The impact of the proposed project on the formation and breakup of ice on the Peace River and its impacts on
 - a. the risk of flooding and related effect on upstream and downstream communities,
 - b. vehicular traffic across the Peace River, including operations of the Shaftesbury Ferry and ice bridge and fog formation at the Dunvegan Bridges, and
 - c. mammalian habitat, movements, and populations.

2. The direct impact of the proposed project on fish, fish habitat, and downstream water quality, particularly
 - a. the impact on up- and downstream fish movements, and
 - b. the risk of mortality or injury to fish passing through the structure.
3. The potential for slumping and erosion as a consequence of the project, including
 - a. impacts to the aquatic environment, and
 - b. impacts to terrestrial vegetative communities.
4. Constraints that the construction and operation of the proposed project might place on the operation of existing and future hydroelectric development.

The Panel believes these are the major issues for discussion during the hearing and urges all parties to focus on these matters in their written submissions and presentations during the hearing. The Panel is prepared to consider additional issues on their merits, provided they fall within the Panel's jurisdiction.

3. SCOPE AND JURISDICTION OF THE JOINT EUB/NRCB PANEL REVIEW

The EUB has jurisdiction to review Glacier's project under the following sections of the Hydro and Electric Energy Act (HEE Act):

7(1) No person shall construct a hydro development unless the Board, by order, has approved the construction of the hydro development in accordance with this section.

8(1) No person shall operate a hydro development unless the Board, by order and with the authorization of the Lieutenant Governor in Council, has approved the operation.

9(1) No person shall construct or operate a power plant unless the Board, by order, has approved the construction and operation of the power plant.

The NRCB has jurisdiction to review Glacier's project because it is a water management project under the Natural Resources Conservation Board Act. Water management projects include

1(j)(i) a project to construct a dam, reservoir or barrier to store water or water containing any other substance for which an environmental impact assessment report has been ordered.

The NRCB Act provides that,

5(1) Notwithstanding any licence, permit, approval or other authorization granted or issued under an Act, regulation or by-law or otherwise under any other law, no person may commence a reviewable project unless the Board, on application, has granted an approval under this Act in respect of the project.

The EUB and NRCB are directed by their respective acts to decide whether the projects they review are in the public interest "...having regard to the social and economic effects of the projects and the effect of the projects on the environment" (ERC Act S 2.1; NRCB Act S 2). The Joint EUB/NRCB Panel will fulfill the mandate of both boards with respect to the review of Glacier's proposed development.

The Board acknowledges that provincial tribunals are entitled to place priority on their own residents' interests. However, the complex relationship of communities, economies, and ecosystems associated with projects such as that proposed may have effects beyond provincial boundaries that must be considered in determining the public interest. Such effects must be weighed against the valid interests of the Alberta public, which may differ from those of extra-provincial parties.

Compensation

In its written submission and oral presentation at the prehearing conference, B.C. Hydro raised concerns that its interests could be adversely affected by the Glacier project and raised the issue of financial compensation for its losses. Glacier submitted that it was not within the jurisdiction of either board constituting the Joint Panel to decide on matters of compensation. The Panel concurs with Glacier that it has no jurisdiction to determine compensation. The Panel will be interested, however, in the submissions of the two power companies with respect to the impact of Glacier's project on B.C. Hydro's operations.

The Panel's Jurisdiction to Consider Alternatives to Glacier's Project and Tradeoffs Between the Proposed Project and Other Projects

A number of participants touched on the issue of alternatives to Glacier's proposal. Ms. Charchuk and Mr. Richardson suggested that coal-fired power generation might be a necessary but undesirable alternative to the current proposal if Glacier was not granted an approval. The Friends of the Peace questioned whether the current proposal represented the best use of the site in terms of maximizing generation capacity while minimizing environmental impacts. Glacier argued that the Panel's task was not to compare alternative projects, but to review and decide on the merits of the project for which it was seeking approval.

The Panel notes that Glacier was required in the terms of reference for its EIA report to submit evidence with respect to the alternative sites and project sizes it had considered. Glacier's evidence on those matters was tendered in its EIA and its response to the Request for Supplemental Information. The Panel believes it is within its jurisdiction to review Glacier's evidence on these alternatives to satisfy itself that the chosen option is acceptable when considered in terms of the broader public interest.

The Panel agrees with Glacier that its purpose is not to compare Glacier's project to other electrical generating projects, either real or hypothetical. The Panel notes, however, that other electrical generating projects and facilities may figure in the Panel's considerations of the social, economic, and environmental impacts of the project under review.

Specifically, B.C. Hydro raised two issues concerning impacts to other electrical generating projects. The first, discussed briefly above, is the prospect that the Dunvegan project could impair the generating capacity of installed upstream hydroelectric facilities, forcing B.C. Hydro to make up the shortfall by other means. The Panel believes that the economic, social, and environmental impacts resulting from changes to the operations of such facilities are squarely within the Panel's mandate if it is clear that those changes would be induced by an approval of the Dunvegan project. At the same time, while the Panel is interested in understanding any direct effects on B.C. Hydro's upstream hydroelectric operation, it is not convinced that it would be appropriate or helpful to consider effects attributed to other sources of electrical generation that might be required to address any shortfall in provincial power supply.

The second issue was the prospect that approving Glacier's project would result in cumulative impacts to the hydroelectric development of the Peace River, including B.C. Hydro's Site C option. Again, the Panel believes that these effects, if a result of a decision with regard to the Dunvegan project, are within its mandate.

The Panel wants to be clear that it has made no determination at this stage about the verity or significance of these purported impacts. It is merely asserting that it has the jurisdiction to consider all of the impacts of the project under review: direct, indirect, induced, and cumulative effects, including any that may be mediated by effects on other power generating facilities and projects.

Glacier's Proposed Exemption Under Section 3 of the Hydro and Electric Energy Act

Glacier noted that even if the EUB found the project to be in the public interest, the EUB must receive authorization by the Legislature in order to issue an approval. Glacier said that it would seek an exemption from this requirement under Section 3 of the HEE Act to avoid what it regards as an unnecessary delay.

The EUB notes that the HEE Act states that before the EUB may issue an order approving the construction of a hydroelectric project, the Legislative Assembly of Alberta must pass a bill authorizing such action by the EUB. At the prehearing meeting, Glacier stated that it intended to present legal argument at the hearing addressing the EUB's jurisdiction to grant the relief requested and why such relief should be granted to Glacier.

The Panel will require that Glacier file written argument on both issues two weeks prior to the commencement of the hearing and that a copy of that submission be directed to Alberta Justice. The Panel expects that counsel for Alberta Justice appearing for AENV and Alberta Sustainable Resource Development would be prepared to offer comments on Glacier's submission at the hearing.

4. HEARING DATE AND LOCATION AND FILING DEADLINES

4.1. Views of the Applicant

Glacier proposed that the hearing be held in Fairview on September 11. It also proposed an interrogatory process in advance of the hearing whereby interveners would submit questions to Glacier and Glacier would respond within a fixed time period. Glacier proposed that interveners submit their questions by July 9 and Glacier would provide responses by July 23. Glacier also proposed that interveners be required to submit their written submissions by August 13, which would allow the company to respond or submit a rebuttal in writing by August 27. Glacier argued that the project review process should move forward as quickly as possible, because there is a need for more power in northern Alberta and its application was filed more than a year ago.

4.2. Views of the Intervenors

Alberta Environment

AENV said that it could accept Glacier's proposed schedule.

Federal Government

The Federal Government indicated that the Canadian Environmental Assessment Agency screening process would not be completed until some time after Glacier filed its additional information on the major outstanding issues. It stated that the outcome of the screening process would affect the Federal Government's time lines. Consequently, it could not commit to a hearing schedule. It did advise the Panel that it anticipated that it would be in a position to determine the Federal Government's role under the Canadian Environmental Assessment Act by mid-July.

B.C. Hydro

B.C. Hydro said that it was surprised that Glacier was seeking a hearing on such a short time line because discussions were still ongoing with regulators and Glacier had not yet discussed key issues with B.C. Hydro. It did not suggest an alternative time line.

DC Farms

DC Farms said that it would be interested in participating in the interrogatory process but did not agree with Glacier's proposed timing. It opposed the September date proposed by Glacier because it would conflict with harvesting and suggested that October would be better for the farming community.

Friends of the Peace

FOTP submitted that Glacier's proposed timetable was unacceptably short, because participants had not had access to the company's latest information and were therefore unable to respond. It said that the hearing timetable must allow participants time to respond to Glacier's final information and suggested that an appropriate time for a hearing would be at least six months after Glacier provided complete evidence. FOTP proposed that the hearing be held in Fairview, Fort Chipewyan, and Edmonton to allow interested parties in those locations access to the proceedings. Alternatively, it suggested that the Panel should provide assistance to allow people to attend the hearings in Fairview.

Paddle Prairie Métis Settlement

PPMS considered the time line proposed by Glacier to be too fast, because it would not allow time for consultations with the company. It called for a six-month delay in the date suggested by Glacier. With respect to the location, the PPMS said that Fairview, Peace River, or anywhere farther north would be appropriate.

Trout Unlimited

Trout Unlimited also concluded that the schedule proposed by Glacier would be too fast and would be unfair to interveners who were awaiting receipt of further information from the company on key issues or were hoping to consult with the company. It said it had not yet decided whether it would need to intervene and would be willing to work with the company to resolve its concerns if the schedule allowed sufficient time. It said the proposed July 9 start to the interrogatory process would deny interveners the opportunity to fully review the company's information, because further information on fisheries issues would not be available until mid-July. Trout Unlimited also noted that the schedule might have to be altered if the Canadian Environmental Assessment Agency opted for a panel review. With respect to the location, it said that Fairview would be appropriate if hotel accommodation were not a problem.

Individuals

D. Richardson and K. Moskalyk, said the proposed time frame for the hearing would be adequate and that the hearing should be held soon. A number of interveners, including D. Richardson, K. Moskalyk, J. Kramer, V. Paish, and A. Chalmers, said that Fairview was the best location for the hearing.

4.3. Views of the Panel

The Panel believes that there is merit in Glacier's proposal for an interrogatory process in advance of the hearing. This approach will give interveners the opportunity to have their concerns addressed directly by the company and will give the company the opportunity to place its responses to concerned citizens on the record. The Panel hopes that through this process some issues will be resolved and other issues will be brought into sharper focus before the hearing begins.

With respect to timing, the Panel believes that participants must have an opportunity to fully review the additional materials related to fish passageways that Glacier has undertaken to provide by mid-July before they are required to pose their remaining concerns to the company. Although Glacier has characterized the ongoing development of the company's position on the key issues of ice and fish as "fine tuning" and said that it was prepared to stand on its existing evidence, the Panel cannot be certain that the forthcoming evidence would not materially affect the submissions of some interveners. It is therefore a matter of fairness to the other parties that they have the opportunity to gain a full knowledge of all the company's evidence before they prepare their interrogatory submissions. The Panel also believes that ensuring that all parties have a common and current understanding of the applicant's project, evidence, and positions will enhance the potential benefits of the interrogatory process to the hearing.

Accordingly, once Glacier has provided the Panel and the interveners with the additional materials, the Panel will give participants 15 working days to submit their questions to Glacier. The Panel directs Glacier to provide its responses to interveners within an additional 15 working days.

The Panel accepts Glacier's view that it has a right to a timely hearing. However, in light of the fluid state of Glacier's evidence and in consideration of the harvest schedule, the Panel does not believe a September hearing is feasible. The Panel is not persuaded that the six-month delay requested by some participants would be helpful. The Panel therefore proposes to commence the hearing on October 2, 2001. The hearing will commence at 9:00 a.m. in Room A, Fairview College, in the Town of Fairview. Written hearing submissions will be due two weeks in advance of the hearing, on September 14.

5. HEARING PROCEDURES

Glacier submitted that the hearing procedures normally followed by the EUB would be appropriate. None of the other participants in the meeting commented on hearing procedures. The Panel will therefore conduct the hearing in its usual manner. Participants who are not familiar with the EUB/NRCB hearing process are encouraged to contact EUB or NRCB staff for information and guidance on how to prepare for the hearing. If there is sufficient interest, staff will be pleased to hold an information session in the community.

6. OTHER PRELIMINARY MATTERS

Consultation

The Panel heard from a number of participants that Glacier had been slow to respond to requests for meetings. Others reported that the company had not consulted with potentially affected communities upstream (i.e., Taylor, B.C.) or downstream (i.e., Fort Chipewyan and Fort Resolution, N.W.T.) of the project.

The Panel acknowledges that Glacier has consulted with a number of parties. It also knows that satisfying the demands for consultation with potentially affected communities is difficult. Nevertheless, it believes that Glacier must make every effort to meet with concerned individuals and communities and to address their concerns where possible. Such consultations may resolve some matters prior to the hearing, will help affected communities to understand the project, and will assist the Panel to conduct a focused hearing. Although the Panel has accepted Glacier's proposal to employ an interrogatory process for addressing outstanding issues, it does not see this process as a substitute for consultations with the public. It accepts the undertaking made by Glacier at the prehearing conference for further consultation with concerned parties.

Adequacy of Information

A number of participants in the prehearing meeting submitted that Glacier's response to the terms of reference for the EIA and to the subsequent supplemental questions was inadequate. Some asked the Panel to postpone the hearing until Glacier produced further scientific evidence on the key issues.

Glacier noted that the AENV Director of Environmental Assessment and Compliance has deemed its EIA to be complete. Glacier stated that it is prepared to test its case in a public hearing and that it accepts that it bears the onus to demonstrate to the satisfaction of the Panel that its project is in the public interest.

The Panel wants to have the best available scientific evidence when it makes its decision. It notes, however, that some degree of uncertainty is associated with every prediction made in environmental assessments and no amount of further study can dispel the problem entirely. In the absence of compelling evidence for the efficacy of proposed mitigation, the Panel may find it necessary to err on the side of caution. Once Glacier has completed its consultation with federal and provincial regulatory authorities on the remaining fisheries issues, the Panel is prepared to hear Glacier's submissions and to render a decision on its application.

Intervener Funding

A number of participants in the prehearing conference expressed their intention to intervene at the hearing into Glacier's proposed project. None of the participants asked the Panel to determine their eligibility for intervener funding. Participants wishing to explore this matter may obtain information from the Panel staff.

7. SUMMARY OF CONCLUSIONS

The Joint EUB/NRCB Panel will hear Glacier's application to construct and operate an 80 MW hydroelectric plant on the Peace River beginning at 9:00 a.m. on October 2, 2001, in the Town of Fairview. The Panel is concerned that all participants in the hearing have sufficient time to review and digest Glacier's evidence and positions. It believes that this can be accomplished if Glacier undertakes to provide its final evidence to the groups and individuals wishing to participate in the hearing within two weeks of completing its discussions with the federal and

provincial governments on the remaining fisheries issues, preferably no later than July 31. The Panel emphasizes that the October hearing date depends on Glacier meeting this deadline.

The Panel agrees with the interrogatory process proposed by Glacier, but not to the time line it proposed. The Panel directs interveners to present their questions in writing to Glacier 15 working days from the time that it provides the Panel and other interveners with any additional information on fisheries issues. The Panel directs Glacier to respond in writing to the parties within the following 15 working days, preferably no later than August 28. For all parties, the deadline for submitting written submissions and/or rebuttal in advance of the hearing is September 14.

At the hearing, the Panel will hear evidence and argument with respect to the issues that were identified at the prehearing conference; these issues are summarized in Section 2.3 of this report. It directs all parties to focus their written submissions and hearing presentations on these matters. The Panel will be prepared to entertain additional issues provided they are both relevant to its mandate of determining the public interest and within the Panel's jurisdiction.

With respect to jurisdiction, the Panel intends to fulfill the responsibilities of the EUB and NRCB in deciding to approve or reject Glacier's application. The Panel has no jurisdiction to determine or award compensation to B.C. Hydro or any other party for any damages suffered if the project is approved. At this time, the Panel is not satisfied that Section 3 of the HEE Act gives it authority under the act to exempt Glacier Power from Section 7, which requires an act of the Legislature authorizing an approval. However, the Panel is prepared to hear submissions on this aspect of its jurisdiction.

DATED at EDMONTON, ALBERTA, July 24, 2001.
Dunvegan Power Project Joint EUB/NRCB Panel

Brian F. Bietz,
Chairman

Jim Dilay
Member

Gordon Miller
Member

Prehearing Conference Participants

Glacier Power	S. Denstedt and B. Johnson
AENV	G. Sprague
Federal Government	M. Vincent
Town of Peace River	K. Bunn
B.C. Hydro	B. Nixon
DC Farms	C. Liefbroer-Chenard
Friends of the Peace	B. Walsh
MD of East Peace	C. Kolebaba
Fort Resolution	M. Boucher and P. Simon
Paddle Prairie	A. Armstrong
Trout Unlimited	K. Brewin
Town of Fairview	Mayor J. Charchuk
MD of Fairview	W. Doll
D. Richardson	
K. Moskalyk	
River Runner Tours	J. Kramer
V. Paish	
Cormac Safety	A. Chalmers
NRCB and EUB	K. Gladwyn
	W. Kennedy
	D. Morris
	R. Powell
	J. Thompson