

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

\_\_\_\_\_) )  
Gustavus Electric Company, ) )  
Falls Creek Hydroelectric Project ) P-11659-002  
\_\_\_\_\_) )

**MOTION TO INTERVENE AND COMMENTS BY SIERRA CLUB, TROUT  
UNLIMITED, AMERICAN RIVERS, NATIONAL PARKS CONSERVATION  
ASSOCIATION, AND GLACIER BAY’S BEAR TRACK INN**

Pursuant to 18 C.F.R. § 385.214, Sierra Club, Trout Unlimited, American Rivers, National Parks Conservation Association, and Glacier Bay’s Bear Track Inn intervene in opposition to the issuance of an original minor license for the Falls Creek Hydroelectric Project. We also submit comments on the Preliminary Draft Environmental Assessment (PDEA). We recommend further procedures for the Commission and U.S. Department of Interior (DOI) to follow pursuant to Federal Power Act Part I and the Glacier Bay National Park Boundary Adjustment Act of 1998.

**INTERESTS OF INTERVENORS**

The Sierra Club is a national membership organization, founded in 1892 and based in San Francisco, California. Our purpose is the exploration, enjoyment, and preservation of the scenic and natural resources of the United States, including public lands in Alaska. The Sierra Club works to educate and enlist the general public to protect and restore environmental quality. Our interests encompass wildlife conservation, wilderness, public lands and waters, endangered species, clean water and clean air. The Sierra Club has approximately 700,000 members. There are three all-volunteer chapters in Alaska. We have a historic connection to Glacier Bay, dating to 1879 when John Muir, our founder, made his first of four visits there. His enthusiastic writings

contributed to the popularity of Glacier Bay as a tourist destination. Today, our members enjoy Glacier Bay for its scenery, wildlife, wilderness, and solitude. They seek out these areas to hike, kayak, photograph, paint, and relax. Although many reside in the Southeast, many also come from other states where such a combination of qualities no longer exists. Indeed, the Sierra Club recognizes that Glacier Bay is unique in the world: a World Heritage Site, and part of an international biological preserve which includes Kluane National Park in the Yukon Territory and Wrangell-St. Elias National Park and Preserve.

Trout Unlimited (TU) is a national membership organization based in Arlington, Virginia. Its purpose is to conserve, protect, and restore North America's coldwater fisheries and their watersheds. TU has approximately 125,000 members, including more than 600 in Alaska. TU members from both in and out of state fish extensively for salmon in Alaska's rivers and coastal waters. TU has been extensively involved in the protection and restoration of coldwater fisheries in the Pacific Northwest. In January 2000, it established the Alaska Salmonid Biodiversity Project, in recognition that the State is the world's largest reservoir of salmon genetic diversity. Conservation of the State's salmon fisheries, including those in Glacier Bay, is one of TU's highest priorities.

American Rivers, Inc. is a national membership organization based in Washington, D.C. Our purpose is the protection and restoration of rivers and their tributary streams throughout the nation. Since 1973, we have helped preserve more than 20,000 miles of rivers and more than 5 million riparian acres. We have over 20,000 members, including more than 100 in Alaska. Some visit Glacier Bay National Park for recreation. Finally, American Rivers and TU are founders of the Hydropower Reform

Coalition, a nationwide association of conservation organizations, which seeks to assure that the Commission license a new project only if best adapted to a comprehensive plan of development of the affected waters.

National Parks Conservation Association (NPCA) is a national membership organization founded in 1919 and based in Washington, D.C. Our purpose is to protect and enhance our National Park System for present and future generations. Today, NPCA has more than 425,000 members, of whom over 1,000 are in Alaska. NPCA has eight regional offices, including one in Anchorage. We have played an active role in the protection and management of Glacier Bay National Park, especially recent issues concerning the phase-out of commercial fishing and the 1996 Vessel Management Plan affecting cruise ships. Our members enjoy visiting Glacier Bay for wilderness recreation and solitude.

Glacier Bay's Bear Track Inn is a wilderness lodge located on Rink Creek Road adjoining Glacier Bay National Park. Built in 1997, it has 97 acres of property. Its property line abuts the Park for approximately 2,600 feet. Operating from May through mid-September, it attracts guests for wilderness experience and easy access to the Park. The project road would either go through or surround this property, degrade the wilderness experience, and potentially eliminate direct access to the Park. The owners (John, Jane, and Mike Olney) have concluded that the project would cause substantial damages to their ongoing business.

### **COMMENTS**

We submit these comments pursuant to the Commission's notice dated December 11, 2001.

Gustavus Electric Company (GEC) seeks the extraordinary privilege of constructing and operating the Falls Creek Hydroelectric Project in the Glacier Bay National Park and Preserve. We believe that Congress has granted a comparable privilege on only one or two occasions in the history of the National Park system. No such project now operates in a National Park in Alaska. Notwithstanding Federal Power Act section 3(c), 16 U.S.C. § 796(2), which prohibits the licensing of a hydropower project in a National Park, the Glacier Bay Boundary Adjustment Act of 1998 authorizes the Commission and the DOI Secretary to consider and grant GEC's application, and to effect the exchange of park lands which the project would occupy, respectively, only if certain conditions are met. The PDEA does not demonstrate compliance with the statutory conditions stated in Section 1(c) of the 1998 Act.

**Prohibited Degradation of Glacier Bay National Park**

Pursuant to Section 2(c)(1)(A) of the 1998 Act, the new license application is approvable only if the Commission and DOI both find that the project "will not adversely affect the purposes and values" of the Glacier Bay National Park and Preserve. The application must be denied if either agency finds that the project may cause any such adverse impact. This is a substantially higher level of protection than applies to a new project proposed for a federal reservation other than a National Park, where FPA sections 4(e) and 10(a) are administered to require only feasible mitigation of any adverse impacts. However, the PDEA does not meet the applicant's burden to demonstrate that the project will not adversely affect the purposes and values of Glacier Bay National Park and Preserve.

The PDEA does not even identify these purposes and values. It does not analyze the enabling statute or implementing rules, policies, or plans for the National Park.

The project would cause significant adverse impacts to Dolly Varden and other aquatic resources of Falls Creek between the diversion and the powerhouse. GEC proposes to divert up to 23 cfs, and to release a minimum instream flow schedule (MIFS) of 5 to 7 cubic feet per second (cfs). PDEA, Table 10, p. 59. Assuming the adequacy of its Instream Flow Incremental Methodology (IFIM) study, the MIFS would reduce by 30 to 45% the available habitat for adult and juvenile Dolly Varden in the bypass reach. *Id.* Further, certain study protocols result in an underestimate of such impacts. The two years of hydrologic data used in the Habitat Time Series (HTS) may substantially overestimate the daily average of natural flow at the site of the proposed diversion work and thus, may also overestimate the impaired flow that would remain in the bypass reach after such diversion. *See* DOI, letter dated August 2, 2001, pp. 4, 14, 20-24; Alaska Department of Fish and Game (ADF&G), letter dated July 20, 2001, pp. 8-10, *contained in* PDEA, Appendix L. Further, the IFIM model was not calibrated to predict habitat availability at any flow less than 12 cfs (e.g., whenever the MIFS is most of the available flow) or whenever the river is iced. ADF&F, *supra*, pp. 8-9.

The project would also disrupt spawning habitat for salmon fisheries in the intertidal area below the powerhouse. The diversion work would interrupt geomorphic process of bedload transport. ADF&G, *supra*, p. 6. Further, it would fill or otherwise occupy 1.15 acres of wetlands. *Id.*, p. 10. Road and related project construction would impair 23.5 acres of nesting habitat for marbled murrelets and other bird species adjacent to access roads and other construction sites. PDEA, p. 69.

The project would degrade the aesthetic values of Falls Creek for recreation. It would reduce the lowest natural flow through the canyon and falls by more than 80%. DOI, supra, at 6. It would degrade the visual appearance and sounds of the running water. The PDEA does not include the systematic study of aesthetic impact requested by the National Park Service (NPS). Id.

Finally, the project would require the transfer to State ownership of 850 acres of wilderness lands in the National Park. PDEA, pp. 70, 81-2. Motorized access for hunting, trapping, or other recreation would be legal, unless the State establishes special restrictions following the transfer. GEC and the State have not reached an agreement regarding such restrictions. Id., pp. 70, 81. There is a risk of non-enforcement, even if such an agreement is reached.

### **Consistency with Water Quality Standards and Coastal Zone Management Program**

Under the Federal Power Act Part I and Section 2(c)(1) of the 1998 Act, the project is approvable only if the State certifies consistency with water quality standards and the Coastal Zone Management Act (CZMA) Program. The PDEA does not identify any of the applicable standards and other management requirements under State law, and it does not analyze project consistency. *See* ADF&G, supra, p. 1.

### **Economic Feasibility**

Section 2(c)(1)(C) of the 1998 Act provides that the project is approvable only if it can be accomplished in an economically feasible manner. The PDEA does not meet this burden.

The PDEA finds that GEC's current electricity load of 1,694 mWh (PDEA, p. 10) will increase to 4,005 mWh by 2007 (id., p. 91). This load growth is a critical variable in

the project production costs, which the Application estimates as 14.4 cents/mWh in 2007. Id., Table 15, p. 91. However, the Application does not state the estimated growth in the population of Gustavus, currently 377 residents, or in their per capita use, that would result in the load growth. *See* PDEA, Ex. D, pp. II-1 – II-2. GEC’s economic analysis cannot be confirmed since these assumptions are unstated.

The PDEA further assumes that the NPS will buy from the project all or most of its load for its visitor facilities in Glacier Bay National Park (currently, 865 mWh), rather than continue to use its own generator. *See id.*, p. 10, 90, 95. Even assuming an annual growth rate of 3.84% in the electricity demand of Gustavus residents, GEC’s load (absent the NPS interconnection) in 2007 would be 2,168 mWh, which is approximately 2,000 mWh less than the estimated load for project service in that year. *See id.*, Ex. D, Table 2, “Middle Forecast.” The NPS has not agreed to such interconnection. The project production cost would be 30.3 cents/kWh, rather than the estimated 14.4 cents, absent such interconnection. *Compare id.*, p. 91 *with id.*, Ex. D, p. V-4.<sup>1</sup> Indeed, according to GEC’s economic consultant, “GEC has indicated that the hydroelectric facility they are considering *will not be economically feasible* without interconnection with the Park and inclusion of the loads.” Id., Ex. D, p. II-2 (emphasis added).

Finally, alternatives to the current diesel generators, including fuel cells like Chugach Electric Association’s facility in Anchorage, would be cheaper than the project, if the assumptions regarding growth rate or NPS interconnection are incorrect. *See*

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<sup>1</sup> The PDEA Exhibit D, as filed, appears to omit the sub-Exhibit D, where its economic consultant estimated production costs. *See id.*, p. V-4, which refers to that sub-Exhibit. Our copy of the Application has a blank page where the sub-Exhibit should be located.

PDEA, Table 12, p. IV-13.<sup>2</sup> GEC's economic consultant concluded: "even though annual benefits accrue from the Falls Creek hydroelectric project [following a break-even year that depends on loads, oil prices, and other factors], the *cumulative benefits are negative due to the high capital costs of the project.*" *Id.*, Ex. D, p. VI-1 (emphasis added).<sup>3</sup>

We generally agree with GEC's stated test of economic feasibility. "For the project to be economically viable, the cost of the project would have to be less than the cost of obtaining an equivalent amount of energy from the most likely alternative source." PDEA, p. 90. The project fails that test.

### **FURTHER PROCEDURE**

We request that the Commission, DOI, and the State agencies responsible for water quality and CZMA certifications, via notices published not later than March 31, 2002, state their schedules and procedures for preparation of the environmental documents and other actions in their respective proceedings. We encourage close coordination, as well as significant opportunities for public participation in each such proceeding.

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<sup>2</sup> These alternatives should be evaluated on the same time horizon as the project. For example, the design of fuel cells is rapidly developing. Buses powered by such cells made by Ballard now operate in Chicago and Vancouver. Siemens-Westinghouse is building a manufacturing facility near Pittsburgh to produce 250 kW stationary units by 2004. The cost of fuel cells, estimated as 21.24 cents/kWh (PDEA, Ex. D, p. IV-8), will likely drop when mass production occurs.

<sup>3</sup> GEC may expect or seek federal or state funds, in the form of grants or low-interest loans, in order to improve project economics. We understand that GEC received a federal grant of \$465,000 in FY 2000 to conduct environmental studies related to the PDEA, and that it intends to seek a low-interest loan from the Alaska Industrial Development and Export Authority. Plainly, alternatives to this project that do not occupy Park lands, including fuel cells, may also qualify for such public funds. GEC should disclose its financing plan. The Commission and DOI should evaluate whether any public funds included in that plan would also be available for construction of alternatives.



## **RECOMMENDED TERMS AND CONDITIONS**

On the record as it stands, we recommend that the Commission deny the license application, and that DOI deny the proposed land exchange. The project would adversely affect the purposes and values of the Glacier Bay National Park and Preserve.

### **SERVICE**

We request that the following representatives be added to the service list in this proceeding:

Andrew Fahlund  
Policy Director of Hydropower Programs,  
AMERICAN RIVERS, INC.  
1025 Vermont Avenue, N.W., Ste. 720  
Washington, D.C. 20005

Steve Rothert  
AMERICAN RIVERS, INC.  
2140 Shattuck Avenue, 5<sup>th</sup> floor  
Berkeley, CA 94704-1222

John, Jane, and Michael Olney  
GLACIER BAY'S BEAR TRACK INN  
P.O. Box 255  
Gustavus, AK 99826

Joan Frankevich  
NATIONAL PARKS CONSERVATION ASSOCIATION  
750 West 2<sup>nd</sup> Avenue, Ste. 205  
Anchorage, AK 99501

Richard Roos-Collins  
NATURAL HERITAGE INSTITUTE  
2140 Shattuck Avenue, 5<sup>th</sup> floor  
Berkeley, CA 94704-1222

Jack Hession  
SIERRA CLUB  
201 Barrow Street, Ste. 101  
Anchorage, AK 99501

Leon Szeptycki  
Environmental Counsel  
TROUT UNLIMITED  
1500 Wilson Blvd., Ste. 310  
Arlington, VA 22209

Jan Konigsberg  
Director, Alaska Salmonid Biodiversity Program  
TROUT UNLIMITED  
1399 West 34<sup>th</sup> Avenue, Ste. 205  
Anchorage, AK 99502

Dated: February 8, 2002

Respectfully submitted,

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Richard Roos-Collins  
NATURAL HERITAGE INSTITUTE

Attorney for SIERRA CLUB, TROUT  
UNLIMITED, AMERICAN RIVERS, NATIONAL  
PARKS CONSERVATION ASSOCIATION, and  
GLACIER BAY'S BEAR TRACK INN

**DECLARATION OF SERVICE**

**Gustavus Electric Company, Falls Creek Hydroelectric Project (P-11659-002)**

I, Tom Hicks, declare that I today served the attached "MOTION TO INTERVENE AND COMMENTS BY SIERRA CLUB, TROUT UNLIMITED, AMERICAN RIVERS, NATIONAL PARKS CONSERVATION ASSOCIATION, AND GLACIER BAY'S BEAR TRACK INN," by first class mail to each person on the service list maintained by the Secretary in this proceeding.

Dated: February 8, 2002

By:

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Tom Hicks  
NATURAL HERITAGE INSTITUTE