January 22, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of	)	
	)	
HYDRO RESOURCES, INC.	)	Docket No. 40-8968-ML
P.O. Box 15910	)	
Rio Rancho, New Mexico 87174	)	

NRC STAFF'S RESPONSE TO INTERVENORS' FINANCIAL ASSURANCE BRIEF

I. INTRODUCTION

In this Subpart L proceeding -- regarding the 10 C.F.R. Part 40 materials license which would authorize Hydro Resources, Inc. (HRI) to conduct *in situ* leach (ISL) uranium mining in New Mexico after certain license conditions are met -- the Commission remanded financial assurance issues to the Presiding Officer, and specified further filings the parties were to submit. *See* CLI-00-8, 51 NRC 227, 242 (2000). In response, HRI submitted its Restoration Action Plan (RAP) on November 21, 2000. Eastern Navajo Diné Against Uranium Mining and Southwest Research and Information Center (collectively, Intervenors) then filed their response to the RAP on December 21, 2000, including as Exhibit 1 thereof an affidavit of Mr. Steven C. Ingle (Ingle Affidavit); and as Exhibit 2 thereof an affidavit of Dr. Richard J. Abitz (Abitz Affidavit).[1] *See* "Intervenors' Response to [HRI's] Cost Estimates and [RAP] of November 21, 2000" (Intervenors' Brief). As directed by the Commission, HRI and the Staff are to submit simultaneous responses to the Intervenors' Brief. *See* CLI-00-8, 51 NRC at 242.

[1] Contentions made by Mr. Ingle and Dr. Abitz are addressed in the affidavit of William H. Ford, attached hereto as Staff Exhibit 1 (Ford Affidavit), at ¶¶ 12-21, and 22-25, respectively.

As discussed below, before the Staff will be able to determine whether the RAP provides the necessary cost estimates on which an initial surety amount can be based (or whether another request for additional information will need to be sent to HRI),[2] the Staff will need to review HRI's response to the Intervenors' Brief. The Commission made clear that before HRI may be authorized to use its license, its cost estimates must be approved by the Staff. *See* CLI-00-8, *supra*, 51 NRC at 242. The new license condition imposed by the Commission prohibits use of the HRI license "until the required information is submitted and a financial assurance plan approved by the NRC Staff is in place." *Id.*, at 238. Under these circumstances, the Staff believes the more prudent course is to review HRI's response to the Intervenors' Brief before deciding what licensing action to take. Accordingly, the Staff's response here will be limited to comments on the Intervenors' Brief. First, however, to put the points raised in the Intervenors' Brief into proper perspective and context, some background information is necessary.

[2] The Staff had earlier found that it needed more specific financial information regarding how HRI's cost figures were derived, and had requested additional information from HRI. *See* letter from John Surmeir, NRC, to Richard Clement, Jr., HRI, dated August 31, 1999. Financial assurance issues were then pending before the Commission, and HRI did not to respond to this letter.

II. BACKGROUND[3]

The Staff issued HRI its ISL license in early 1998.[4] In part of the subsequent adjudication, the former presiding officer denied the Intervenors' request that the HRI license be revoked, rejecting arguments that financial assurance requirements had not been met. *See* LBP-99-13, 49 NRC 233 (1999). The Intervenors' financial assurance argument was based, in part, on the requirements of Criterion 9 in 10 C.F.R. Part 40, Appendix A ("Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material from Ores Processed Primarily for Their Source Material Content")(Appendix A).[5] Criterion 9 sets forth financial provisions intended to ensure that adequate surety funds will be available for decommissioning purposes, in case the NRC licensee becomes insolvent. The relevant point of controversy which brings this matter to the Presiding Officer on remand is with respect to Criterion 9's requirement that cost estimates be provided on which to base the amount of the initial surety. In this regard, Criterion 9 states as follows:

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[3] Some of this Background discussion repeats information stated in the "NRC Staff's Response Brief on Financial Surety Issues," filed with the Commission on September 3, 1999.

[4] The license issued in 1998 pertained to HRI's proposed ISL mining at three separate locations in New Mexico, *i.e.*, the Church Rock site (consisting of Section 8 and Section 17, contiguous land parcels about five miles north of the town of Church Rock), the Unit 1 site, and the Crownpoint site. At HRI's request, the former presiding officer issued an order holding the adjudication in abeyance with respect to all sites except the Section 8 portion of the Church Rock site, a ruling now pending before the Commission. *See* CLI-00-8, *supra*, 51 NRC at 242-43.

[5] The Intervenors had also relied on other criteria in Appendix A, but the Commission found that much of Appendix A does not apply to ISL mining. *See* CLI-99-22, 50 NRC 3, 9 (1999). As indicated by its title, Appendix A is directed more towards conventional uranium milling operations, rather than ISL mining.

> The amount of funds to be ensured by such surety arrangements must be based on Commission-approved cost estimates in a Commission-approved plan for (1) decontamination and decommissioning of mill buildings and the milling site to levels which allow unrestricted use of these areas upon decommissioning, and (2) the reclamation of tailings and/or waste areas in accordance with technical criteria delineated in Section I of this Appendix. The licensee[6] shall submit this plan in conjunction with an environmental report . . . . In establishing specific surety arrangements, the licensee's cost estimates must take into account total costs that would be incurred if an independent contractor were hired to perform the decommissioning and reclamation work. . . .

10 C.F.R. Part 40, Appendix A, Criterion 9 (footnote added).

HRI License Condition (LC) 9.5 incorporated various Criterion 9 provisions into HRI's license, and prohibits HRI from performing any ISL mining until an NRC-approved surety arrangement is in place. The former presiding officer's refusal to revoke HRI's license on financial assurance issues was based largely on the provisions of LC 9.5. *See* LBP-99-13, *supra*, 49 NRC at 236-37. The Commission, in reviewing LBP-99-13, upheld the findings made there that (1) the 10 C.F.R. § 40.36 surety requirements were not applicable to HRI's license; and (2) an established surety arrangement is not a prerequisite to issuing an ISL license, as Criterion 9 does not require that such a surety be in place until ISL operations are set to begin. *See* CLI-99-22, 50 NRC 3, 18 (1999). However, the Commission found that questions remained unresolved regarding when a financial assurance plan containing cost estimates had to be approved by the Staff, and the parties were accordingly requested to submit briefs to the Commission on these questions. *Id.*, at 18-20.

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[6] The Commission construed the term "licensee" here to include a license applicant. *See* CLI-00-8, *supra*, 51 NRC at 239 and n.12.

In May, 2000, after further considering these questions, the Commission issued CLI-00-8. Based on Criterion 9's rulemaking history, the Commission concluded that Criterion 9 "is best interpreted as requiring submission and approval of a financial assurance plan and cost estimates" before a license is issued. CLI-00-8, *supra*, 51 NRC at 239. However, rather than revoking HRI's license, the Commission chose to impose a new license condition prohibiting use of the license until the required cost estimate information is submitted, and a financial assurance plan is approved by the NRC Staff. *Id.,* at 238, and 241-42. In remanding this proceeding to the present Presiding Officer, the Commission specifically referenced LC 9.5 in noting that the amount of the initial surety required may later be increased. *Id.,* at 245; *see also id.*, at 236 (summarizing the former Presiding Officer's finding "that the surety amount can be increased at any time if the NRC Staff determines that well-field restoration requires greater pore volumes or a higher cost").

III. DISCUSSION

Remarkably, the Intervenors' Brief (1) ignores LC 9.5 (as discussed in Section A, *infra*); (2) omits relevant portions of Criterion 9, thereby failing to establish an adequate legal basis for some of its criticisms of the RAP (*see* Section B, *infra*); (3) fails to discuss HRI's license in the context of the performance based licensing (PBL) approach, which the Commission has endorsed in this proceeding[7] (*see* Section C, *infra*); and (4) argues issues which are outside the scope of those remanded by the Commission to the Presiding Officer. *See* Section D, *infra*.

[7] *See* CLI-99-22, *supra*, 50 NRC at 16-18.

A. Intervenors' Financial Assurance Analysis is Incomplete

The Intervenors' failure to take into account LC 9.5 distorts the financial analysis of the HRI licensing process[8] by erroneously inflating the importance of HRI's initial cost estimates. Contrary to what the Intervenors' Brief implies, these estimates do not rigidly establish a surety amount which might, in future years, prove insufficient to cover all decommissioning costs.[9] LC 9.5 instead establishes a flexible method whereby the surety amount may be updated as circumstances require. As stated above, LC 9.5 incorporated Criterion 9 provisions into HRI's license, and joined them with the Staff's site-specific finding that the initial surety amount was to be based on an assumed nine-pore-volume groundwater restoration effort to be undertaken at the initial well fields. This nine-pore-volume finding will govern until a production-scale restoration effort more firmly establishes what HRI's groundwater restoration costs will be. Specifically, LC 9.5 states in pertinent part as follows:

> As a prerequisite to operating under this license, the licensee shall submit an NRC-approved surety arrangement to cover the estimated costs of decommissioning, reclamation, and groundwater restoration. Generally, these surety amounts shall be determined by the NRC based on cost estimates for a third party completing the work in case the licensee defaults. Surety for groundwater restoration of the initial well fields shall be based on 9 pore-volumes. Surety shall be maintained at this level until the number of

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[8] In their initial financial assurance arguments made to the former presiding officer, the Intervenors similarly failed to properly account for the provisions in LC 9.5, as previously emphasized by the Staff. *See* "NRC Staff's Response to Intervenors' Presentations on Technical Qualification, Financial, and Decommissioning Issues," dated February 18, 1999, at 5-7.

[9] In attacking HRI's RAP as being "scientifically unsupported" and "contrary to law"; as creating "a host of potential public health dangers for Church Rock and surrounding communities;" and as inviting "environmental disaster if HRI were to declare bankruptcy or cease to exist" (Intervenors' Brief, at 3), the Intervenors significantly overstate their case. The rest of the Intervenors' Brief does not substantiate these general assertions.

> pore volumes required to restore the groundwater quality of a production-scale well field has been established by the restoration demonstration described in LC 10.28. If at any time it is found that well field restoration requires greater pore-volumes or higher restoration costs, the value of the surety will be adjusted upwards. Upon NRC approval, the licensee shall maintain the NRC-approved financial surety arrangement consistent with 10 CFR Part 40, Appendix A, Criterion 9.

This license condition was written to ensure that any environmental impacts produced by HRI, in conducting its ISL uranium mining operations (*i.e.,* by injecting lixiviant), would not be allowed to occur in the absence of adequate assurance that sufficient funds would be available to cover later cleanup costs. Recognizing that changes occur over time as mining progresses, due to both general economic conditions and the site-specific nature of ISL mining, LC 9.5 requires annual updates of the surety amount.[10] These updates take into account the rate of inflation, the results of HRI's initial well field restoration efforts, and any changes in HRI's operation not already factored into the existing surety amount. Specifically, LC 9.5 further states, in pertinent part, as follows:

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[10] These LC 9.5 provisions are based on the following requirements stated in Criterion 9 of Appendix A:

> The licensee's surety mechanism will be reviewed annually by the Commission to assure that sufficient funds would be available for completion of the reclamation plan if the work had to be performed by an independent contractor. The amount of surety liability should be adjusted to recognize any increases or decreases resulting from inflation, changes in engineering plans, activities performed, and any other conditions affecting costs. Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of surety liability must be retained until final compliance with the reclamation plan is determined. This will yield a surety that is at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal.

Appendix A, Criterion 9 (emphasis added). The underlined portions of this Criterion 9 excerpt are not contained in the excerpt the Intervenors chose to present. *See* Intervenors' Brief, at 9.

> Annual updates to the surety amount, required by 10 CFR Part 40, Appendix A, Criterion 9, shall be provided to the NRC at least 3 months prior to the anniversary date of the license issuance. If the NRC has not approved a proposed revision 30 days prior to the expiration date of the existing surety arrangement, the licensee shall extend the existing arrangement, prior to expiration, for 1 year. Along with each proposed revision or annual update of the surety the licensee shall submit supporting documentation showing a breakdown of the costs and the basis for the cost estimates with adjustments for inflation (i.e., using the approved Urban Consumer Price Index), maintenance of a minimum 15 percent contingency, changes in engineering plans, activities performed, and any other conditions affecting estimated costs for site closure.
>
> The licensee shall provide an NRC-approved updated surety before undertaking any planned expansion or operational change which has not been included in the annual surety update. This surety update shall be provided to the NRC at least 90 days prior to the commencement of the planned expansion or operational change.

Accordingly, having ignored LC 9.5 in their financial assurance analysis, the Intervenors' portrayal of a rigid licensing system is highly inaccurate and incomplete. HRI's initial cost estimates merely start an ongoing process of establishing and maintaining proper surety values, as provided for by the LC 9.5 terms set forth above. *See also* the affidavit of William H. Ford, attached hereto as Staff Exhibit 1 (Ford Affidavit), at ¶¶ 3-4, discussing additional aspects of the surety requirements as applied to HRI.

B. Some Financial Criticisms of the RAP Lack an Adequate Legal Basis

As stated above, LC 9.5 incorporated provisions of Appendix A, Criterion 9, into HRI's license. Criterion 9 sets forth financial provisions intended to ensure that adequate funds will be available for decommissioning purposes, and its requirements largely pertain to establishing a surety arrangement (such as a bond, certificate of deposit, or irrevocable letter of credit) to be drawn on if the NRC licensee becomes insolvent. As reflected in note 9, *supra*, the Intervenors chose to leave out of their recent brief any reference to several relevant portions of Criterion 9 on which much of LC 9.5 is based. As a result, in the three

instances discussed below, the Intervenors' criticisms of the RAP lack an adequate legal basis.

1. Cost of Treating ISL Mining Fluid

As reflected in the Intervenors' Brief, at 24 and n.14, HRI stated in the RAP that it planned to treat mining fluid using a reverse osmosis (RO) device, which concentrates dissolved solids in the mining fluid into a brine, while producing a larger stream of clean water. The RO device referenced in the RAP is capable of effectively treating fluids containing up to 4,800 milligrams per liter (mg/l) of total dissolved solids (TDS).[11] By relying on the lower cost of a RO device capable of treating fluids containing up to 4,800 mg/l of TDS, rather than the higher cost of a RO device capable of treating fluids containing a greater concentration of TDS, HRI's RAP is said to wrongly underestimate the costs of treating HRI's mining fluid. *See* Intervenors' Brief, at 24 and n.14. If the scenario posited by the Intervenors proves to be true once HRI's ISL operations at Section 8 begin, and a more expensive RO device must be used, a corresponding adjustment to HRI's surety amount may be required, pursuant to LC 9.5 and Criterion 9. The Intervenors' scenario erroneously depicts HRI's cost estimate as not being subject to later change, should circumstances warrant, leaving the mistaken impression that harm will result if the allegedly inaccurate cost estimate is not corrected now.

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[11] The Staff projected in its 1997 Final Environmental Impact Statement (FEIS) pertaining to HRI's license that the TDS of the mining fluid would range between 1,500 and 5,500 mg/l. The Intervenors speculate that if the actual TDS level of the mining fluid entering the RO device is in the middle to upper end of the projected range, then the TDS levels of the brine could be much higher than 4,800 mg/l, as a result of the RO device's concentrating effect. The Intervenors cite a proposed ISL operation in Wyoming, where it is anticipated that an RO device will produce a brine having a TDS concentration of 40,000 to 60,000 mg/l. *See* Intervenors' Brief, at 24 and n.14.

2. Costs of Well Plugging and Abandonment

As reflected in the Intervenors' Brief, at 25-26 and n.16, HRI stated in the RAP that it anticipates installing 215 injection wells and 226 extraction wells on Section 8. Based on prior statements made by HRI, Intervenors claim these numbers underestimate by a factor of two the number of wells that will have to be plugged and abandoned during well field restoration.[12] Having two times as many wells on Section 8 would nearly double the estimated cost of well plugging and abandonment from the $401,345 figure stated in the RAP, to more than $800,000. *See* Intervenors' Brief, at 25-26 and n.16. Assuming the Intervenors' calculations here are accurate, and that during HRI's ISL operations at Section 8 more wells than now accounted for are drilled, a corresponding adjustment to HRI's surety amount may be required, pursuant to LC 9.5 and Criterion 9. No regulation or other requirement prevents HRI from scaling back its earlier estimate on the number of Section 8 wells. If more wells are later drilled, and HRI does not report this, such action would be readily apparent during any NRC inspection, and HRI would be subject to enforcement sanctions. Thus, the harm resulting from HRI's scaling back on its earlier estimate on the number of Section 8 wells -- if indeed that has occurred -- is not readily apparent.

3. Restoration Costs of Attaining Baseline Water Quality

As reflected in the Intervenors' Brief, at 31-32, the Intervenors contend that HRI's cost estimate for restoring groundwater quality is incorrectly based on the NRC's

[12] In its license application, HRI estimated that the entire Church Rock site (Section 8 and Section 17 combined) would have more than 1,700 wells. This number is based on a table contained in HRI's April 1996 answer #92 to a Staff request for additional information. If that total were divided between Section 8 and Section 17, the Intervenors calculate that HRI would have about 845 wells on Section 8. *See* Intervenors' Brief, at 25-26 and n.16.

determination that the groundwater will have to be flushed nine times, rather than on what it will actually cost to attain baseline water quality after ISL mining is done.[13] The Intervenors conclude that restoring the TDS to its baseline value at Section 8 "will cost considerably more and take much longer" than what HRI's cost estimates now indicate. *Id.,* at 32. At this time -- before any ISL mining at Section 8 has occurred -- estimates as to how much it will eventually cost to restore groundwater quality are necessarily imprecise. *See* Ford Affidavit, at ¶ 3. This is one reason why LC 9.5 requires that HRI's surety amount be updated periodically as events unfold.

Moreover, as stated above, the Staff made a finding -- reflected in LC 9.5 -- that the initial surety amount was to be based, in part, on an assumed nine-pore-volume groundwater restoration effort, which would be undertaken at the initial Section 8 well fields. This nine-pore-volume finding will govern until a production-scale restoration effort more firmly establishes what HRI's groundwater restoration costs will actually be. *See* LC 10.28. Additionally, before any ISL mining occurs, groundwater restoration goals must be established, as set forth in LC 10.21. TDS is one of the groundwater quality parameters to be measured. *See* LC 10.21B. As reflected in LC 10.21A, there are primary and secondary groundwater restoration goals, and only the primary goal corresponds with baseline water quality for any given parameter to be measured. Accordingly, the Intervenors' focus on cost estimates for restoring TDS to its baseline value at Section 8 is misplaced, as neither HRI's license nor any regulation requires that such a restoration be

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[13] In this regard, the Intervenors state Mr. Ingle's belief to be that HRI must "determine baseline water quality early in the licensing or permitting process so that restoration standards can be established." *Id.,* at 31. Additionally, the Intervenors cite FEIS estimates that at the Church Rock site, the TDS baseline value is 360 mg/l, and that the ISL mining fluid will contain 1,500 mg/l to 5,500 mg/l of TDS. *Id.,* at 32.

accomplished. Instead, should experience at Section 8 show that nine pore volumes does not sufficiently restore groundwater quality (*i.e.*, if, after the aquifer is flushed with nine pore volumes, the secondary groundwater restoration goals for measured parameters are not attained), more aquifer flushing would have to occur, and HRI's surety amount would be adjusted accordingly, pursuant to LC 9.5 and Criterion 9.

As shown above in Sections B. 1-3, these Intervenor criticisms of the RAP ignore relevant Criterion 9 provisions, LC 9.5, and other pertinent conditions in HRI's license. These criticisms of the RAP are therefore lacking in merit.

C. HRI's License is Performance-Based

As indicated above, HRI's license is goal-oriented, and contains fewer prescriptive requirements than did similar ISL licenses in the past. This is consistent with the regulatory flexibility embodied in the performance based licensing (PBL) approach, which the Commission has endorsed in this proceeding as applied to ISL mining licenses.[14] *See* CLI-99-22, *supra*, 50 NRC at 16-18. The Intervenors ignore the PBL concept here, and instead rely heavily on a 1988 guidance document, "Technical Position On Financial Assurances For Reclamation, Decommissioning, and Long-Term Surveillance and Control of Uranium Recovery Facilities" (Technical Position).[15] As with any NRC guidance document, the

[14] The PBL approach is particularly suited to ISL mining, as such mining is less hazardous than conventional mining, and is wholly dependent upon the site-specific characteristics of individual well fields which are not known until the licensee is ready to commence mining operations.

[15] The Technical Position is identified as Exhibit 3 to the Intervenors' Brief, but no copy of it was attached to their December 21, 2000 filing.

Technical Position does not set forth legal requirements.[16] The Technical Position reflects this in its statement that while it "presents acceptable methods" for complying with NRC regulations, alternative "methods, solutions, and financial assurances may be proposed and submitted" for consideration. Technical Position, at 2. Moreover, the Technical Position was written before NRC adopted the PBL approach, and is thus of little relevance here. Similarly, the Presiding Officer should give little if any weight to the references made in the Intervenors' Brief, the Ingle Affidavit, and the Abitz Affidavit, to ISL sites operating under licenses previously issued by the NRC, as those licenses were issued before the NRC adopted the PBL approach.

The PBL approach is consistent with the Commission's general finding that financial assurance requirements applicable to materials licenses are not as rigorous as those applied to power reactors under 10 C.F.R. Part 50, due in part to the lower risks involved.[17] *See Louisiana Energy Services* (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294, at 306 and n.18 (1997) (license applicant was financially qualified based in part on fact that

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[16] *See In the Matter of Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-900, 28 NRC 275, 290 (1988), *review declined*, CLI-88-11, 28 NRC 603 (1988)(NUREGS and other guidance documents do not establish regulatory requirements, and when the words in such documents "conflict or are inconsistent with a regulation," the wording of the regulation prevails). *Accord, In the Matter of the Curators of the University of Missouri,* CLI-95-8, 41 NRC 386, 397 (1995)(statements in NRC regulatory guides and NUREG documents do not impose legal requirements on the NRC).

[17] A study comparing ISL mining operations with conventional milling operations is consistent with this finding. The study found that ISL mining decommissioning costs average about half the amount it costs to decommission a conventional uranium mining site (in 1994 dollars). *See* "Decommissioning of U.S. Uranium Production Facilities," DOE-EIA-0592 (February, 1995), published by the Energy Information Administration, Tables 3 and 6, at pages 17 and 38, respectively (attached as Staff Exhibit 1 to "NRC Staff's Response Brief on Financial Surety Issues," dated September 3, 1999).

health and safety risks associated with uranium enrichment are less than those associated with operation of nuclear reactors).

In failing to discuss HRI's license in the context of the PBL approach, the Intervenors fail to relate their critique of the RAP to the NRC's current licensing practices.

D. Some Issues Outside the Scope of Those Remanded by the Commission

The Intervenors' Brief argues issues (set forth below) which are outside the scope of those financial assurance issues remanded by the Commission to the Presiding Officer.[18]

1. The RAP Only Addresses Section 8

The Intervenors assert that the RAP "is fundamentally deficient" in only addressing Section 8, rather than including in its scope the proposed ISL mining sites at Church Rock Section 17, Unit 1, and Crownpoint as well. Intervenors' Brief, at 2; *see also id.*, at 11-12. The Presiding Officer should not consider this argument, because in its remand decision, the Commission did not require HRI to submit a RAP addressing sites other than Section 8. *See* CLI-00-8, *supra*, 51 NRC at 242. On this issue, the Intervenors further state "that the law gives the Commission no flexibility to defer the requirement for submission of a decommissioning funding plan" for the proposed ISL mining sites at Church Rock Section

[18] In noting that differences exist between the RAP and other licensing documents (one of these differences is discussed in Section B.2 and note 11, *supra*), the Intervenors "reserve the right to demand [that] a supplemental FEIS" be prepared, pending receipt of HRI's explanation of the differences. Intervenors' Brief, at 22. Since this issue is not ripe, there is no need for the Staff to address it now. Moreover, in its remand decision, the Commission did not address any National Environmental Policy Act (NEPA) issues, but did reference the fact that NEPA issues remain before the Commission for decision. *See* CLI-00-8, *supra*, 51 NRC at 243. Accordingly, even if the Intervenors' demand is considered ripe, as a NEPA contention it is outside the scope of issues remanded by the Commission to the Presiding Officer, and should not be considered here.

17, Unit 1, and Crownpoint. Intervenors' Brief, at 12. Such argument belongs before the Commission, not the Presiding Officer, and should not be considered here.

2. HRI's License Should Be Revoked

Similarly outside the scope of this remanded proceeding is the Intervenors' argument that due to the RAP's "technical inadequacies," the Presiding Officer should revoke HRI's license. Intervenors' Brief, at 3. As previously stated, the Commission has already determined that, rather than revoking HRI's license, the proper remedy here for the lack of adequate cost estimates is the new HRI license condition, which prohibits use of the license until the required cost estimate information is submitted and a financial assurance plan is approved by the NRC Staff. *See* CLI-00-8, *supra*, 51 NRC at 238, and 241-42. Accordingly, at this time, the remedy of revoking HRI's license is not available, for it remains to be determined by the Staff whether HRI's RAP contains adequate cost estimates, or whether HRI will need to submit additional financial information.

Accordingly, since the issues described above in Section D are not within the scope of this remanded proceeding, the Presiding Officer should not consider these issues here.

IV. CONCLUSION

As indicated above, the Intervenors' Brief contains several shortcomings. Nonetheless, the Staff believes it will have a better understanding of the RAP, and will be better able to ascertain whether any of the Intervenors' criticisms of the RAP have merit, once the Staff has had a chance to review HRI's response to the Intervenors' Brief.

Respectfully submitted,

John T. Hull ***/RA/***
Counsel for NRC Staff

Dated at Rockville, Maryland
this 22nd day of January 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

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	)	
HYDRO RESOURCES, INC.	)	Docket No. 40-8968-ML
P.O. Box 15910	)	
Rio Rancho, New Mexico 87174	)	

CERTIFICATE OF SERVICE

I hereby certify that signed copies of "NRC STAFF'S RESPONSE TO INTERVENORS' FINANCIAL ASSURANCE BRIEF," and Staff Exhibit 1 attached thereto, have been served on those listed below (except those marked by double asterisks, to whom only electronic copies were sent), either by U.S. Mail, first class, or by internal distribution, this 22nd day of January, 2001. Additionally, electronic copies have been transmitted this date to those listed below and marked by single asterisks.

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