

BEFORE THE PRESIDING OFFICER

In the Matter of)	
)	
HYDRO RESOURCES, INC.)	Docket No. 40-8968-ML
P.O. Box 777)	
Crownpoint, New Mexico 87313)	
)	

NRC STAFF'S RESPONSE IN OPPOSITION
TO INTERVENORS' MOTION FOR LEAVE TO REPLY

INTRODUCTION

On July 7, 2004, Intervenors Eastern Navajo Dinè Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC") filed "Intervenors' Motion for Leave to Reply to Hydro Resources Inc.'s and Nuclear Regulatory Commission Staff's Responses in Opposition to Motion to Supplement the Final Environmental Impact Statement for Church Rock Sections 8 and 17" ("Motion"). In their Motion, ENDAUM and SRIC request the Presiding Officer to allow the Intervenors to reply to the Hydro Resources Inc. ("HRI") and Nuclear Regulatory Commission Staff ("Staff") filings of June 21, 2004 and June 25, 2004, respectively, which oppose the Intervenor's Motion to Supplement the Final Environmental Impact Statement ("FEIS").

For the reasons discussed below, the Staff respectfully requests that the Presiding Officer deny the Intervenors' Motion for Leave to Reply.

DISCUSSION

The Commission's Rules of Practice specifically provide that a "moving party shall have no right to reply, except as permitted by the presiding officer or the Secretary or the Assistant Secretary." 10 C.F.R. § 2.730(c). Consistent with § 2.730(c), as a general matter, "[m]otion practice before this Commission involves *only a motion and an answer*; the rules provide expressly that the moving party shall have *no right to reply* to an answer in opposition to his motion." *Detroit Edison Co.* (Enrico Fermi Atomic Plant, Unit 2), ALAB-469, 7 NRC 470, 471 (1978) (emphasis

added), *citing* 10 C.F.R. § 2.730(c). Furthermore, if a party, in this case the Intervenors, seeks leave to reply to a response, it has been established that “such leave will be granted *sparingly*, and then only upon a *strong showing of good cause*.” *Commonwealth Edison Co.* (Byron Station, Units 1 and 2), LBP-81-30A, 14 NRC 364, 372 (1981) (emphasis added). Indeed, one Licensing Board denied a moving party’s request to reply to a response on the grounds that “this rule [§ 2.730(c)] puts a party on notice that its original motion should be *exhaustive* in support of and/or in explanation of the subject matter.” *Pub. Serv. Co. of New Hampshire* (Seabrook Station, Units 1 and 2), 1987 WL 383710 (N.R.C., January 13, 1987) (emphasis added).¹

Intervenors assert that they “have good cause to reply here, in order to correct erroneous and incomplete statements by HRI and the [NRC] Staff ...” Motion for Leave to Reply, at 2.² However, a mere assertion that a reply is necessary to illuminate the Licensing Board on the other parties’ alleged misrepresentations has previously been rejected as grounds for good cause.³ *Pub. Serv. Co. of New Hampshire* (Seabrook Station, Units 1 and 2), 1987 WL 109481 (N.R.C., March 24, 1987). In *Seabrook*, the Licensing Board denied the Petitioner’s motion for a limited reply, holding that the good cause requirement of § 2.730(c) is not satisfied by merely claiming that there is a “misrepresentation” in the applicant’s answer. *Id.* In denying the motion, the Licensing Board noted that “a moving party has no right to reply” and that the “Licensing Board itself is quite capable of discerning misrepresentations, if any, and whether apparent or not.” *Id.* The same

¹ See also *Tennessee Valley Authority* (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), 2002 WL 723798 (N.R.C. April 12, 2002) (The Licensing Board denied the Petitioner’s request to file a reply holding “pursuant to the Commission’s Rules of Practice, there is no right to file a reply and [the Petitioner’s] motion fails to demonstrate good cause why the Board should act favorably upon her request”).

² Specifically, the Intervenors cite to six instances in which they believe HRI and the NRC Staff have made “erroneous” and “incorrect” statements. Motion for Leave to Reply, at 2.

³ The Staff analogizes “misrepresentations” with the present Intervenors allegations of “erroneous” and “incorrect” statements.

rationale holds true in this case - the Presiding Officer is capable of identifying any “erroneous” or “incorrect” statements contained in the pleadings filed by any party. It is not necessary for the Intervenor to take on that role by filing a reply to the HRI and Staff Responses’.⁴

Moreover, the Intervenor is represented by competent counsel well-versed in NRC practice. The Intervenor had sufficient opportunity to draft an exhaustive pleading, including any arguments that they believed necessary to support their Motion to Supplement the FEIS. Granting the Intervenor’s Leave to Reply now would simply condone unnecessary and duplicative pleadings and would reward what would seem to be, at least implicitly, a self-acknowledged lack of diligence in drafting the initial pleadings.⁵ The required showing of good cause requires more.

CONCLUSION

The Intervenor has failed to demonstrate good cause sufficient to permit them to file a reply to the HRI and the Staff Responses’. In light of the foregoing, the Staff respectfully requests that the Intervenor’s Motion for Leave to Reply be denied and that this proceeding be brought expeditiously to a resolution on the merits.

Respectfully submitted,

/RA/

Mauri T. Lemoncelli
Counsel for NRC Staff

Dated at Rockville, Maryland
this 22th day of July, 2004

⁴ The purpose of litigation is to resolve disputes of law or facts. It stands to reason that in all cases opposing parties have fundamentally differing viewpoints. Accordingly, every party to a litigation would be able to seek leave to reply simply upon a claim there was an “error” or “incorrect” statement in the response to a motion, which is clearly contrary to the objective of § 2.730(c).

⁵ See *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-91-08, 33 NRC 461, 469 (1991). Although accepting a petitioner’s “reply” pleading, the Commission itself warned that “we do not wish to provide incentive to future movants to file additional and unnecessary pleadings” and “we expect future movants to anticipate potential arguments and lengthy responses and to frame their opening pleadings accordingly.”

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE IN OPPOSITION TO INTERVENORS' MOTION FOR LEAVE TO REPLY" in the above-captioned proceeding have been served on the following persons this 22nd day of July, 2004, by deposit into the U.S. Mail, first class (or as indicated by an asterisk, through the Nuclear Regulatory Commission's internal mail system), and by electronic mail (except as indicated by a double asterisk).

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