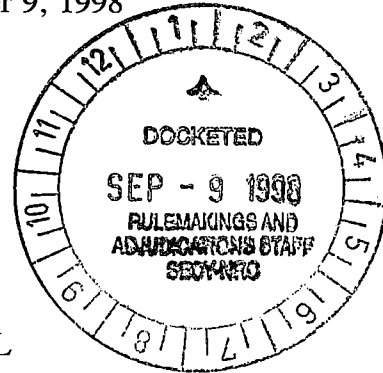


September 9, 1998

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judge Peter B. Bloch, Presiding Officer



In the Matter of )  
HYDRO RESOURCES, INC. )  
2929 Coors Road, Suite 101 )  
Albuquerque, NM 87120 )

Docket No. 40-8968-ML

ASLBP No. 95-706-01-ML

**ENDAUM'S AND SRIC'S RESPONSE TO SCHEDULING BRIEFS**

ENDAUM and SRIC hereby respond to the scheduling briefs filed by HRI, the NRC Staff, and Marilyn Morris and Grace Sam.

**I. THIS PROCEEDING SHOULD NOT BE PARTIALLY DELAYED.**

HRI and the Staff cite no legal authority (nor is there any) to support their request for an extended delay of the hearing on Section 17, Unit 1 and Crownpoint and limitation of the initial hearing to Section 8.<sup>1</sup> HRI Brief at 3; Staff Brief at 9. As discussed in

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<sup>1</sup>In support of its request, HRI contends that Section 8 is "the least environmentally sensitive" segment of the Crownpoint Project, because it has "no nearby drinking water wells, no underground mine workings," and "no pre-existing surface contamination." HRI Brief at 2. Aside from being irrelevant to the question of whether the requested delay is warranted, this assertion is largely incorrect. In fact, there *are* wells commonly used for drinking water near Section 8. *See* ENDAUM and SRIC's Second Amended Request for Hearing, Petition to Intervene, and Statement of Concerns at 70-72 (August 15, 1997). And, there *is* pre-existing surface contamination on the southeast corner of Section 8. *See* HRI, Churchrock Revised Technical Report at Figure 2.9-1 (March 16, 1993). Finally, Section 8 is an environmentally sensitive area because it is hydrologically connected to Section 17, which lies upgradient from Section 8 and contains underground mine workings. *See* ENDAUM and SRIC's Brief at 26-27, Third Affidavit of Mike Wallace, ¶¶ 17-20. If Section 17 is mined after Section 8, as planned by HRI, contaminated groundwater may flow into restored portions of Section 8. *Id.*

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ENDAUM's and SRIC's Brief at Section I, such a delay would be unlawful and would waste the resources of the Presiding Officer and parties.<sup>2</sup> Further, while the Staff endorses HRI's request for delay, a significant portion of its brief is devoted to demonstrating that HRI's license is adequately supported, and requires no further information to justify its issuance. Staff Brief at 10-17. Accordingly, the Staff's brief effectively supports Intervenor's position that the entire case is ready to be heard.<sup>3</sup>

## **II. CONTENTIONS SHOULD NOT BE REQUIRED.**

All parties agree that in lieu of contentions, the Presiding Officer should follow Subpart L procedures for written presentations under 10 C.F.R. § 2.1233. *Id.* at 4-7; HRI Brief at 4; Morris and Sam Brief at 14. As the Staff points out, the Presiding Officer has no authority to order the filing of contentions, without authorization from the Commission. Staff Brief at 5. Because the use of contentions in these circumstances

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<sup>2</sup>Nor would the unlawfulness of the proposed delay be allayed by HRI's proposal to provide "reasonable notice" of its intent to engage in activities beyond Section 8. HRI Brief at 3. Such notice would not cure the severe prejudice to ENDAUM and SRIC a delay would cause, including the unfairness in delaying resolution of the lawfulness of a license that has already issued, the complete deprivation of an opportunity to challenge the basis for the license, and the illegal segmentation of the licensing proceeding under the National Environmental Policy Act ("NEPA"). *See* ENDAUM's and SRIC's Brief, at 10-11, 14-15, 18-27. Even if HRI gave notice, Intervenor's ability and right to proceed with a hearing at that point is questionable. *Id.* at 12.

<sup>3</sup>In responding to the Presiding Officer's query as to whether HRI and the Staff are prepared to defend the HRI license against the Intervenor's concerns, the Staff asserts that HRI, not the Staff, has the burden of proof. Staff Brief at 17. The Staff is only partially correct. Although HRI carries the burden of proof with respect to issues relating to HRI's license, the Staff has the burden of proof with respect to whether its Environmental Impact Statement satisfies the requirements of NEPA. *Louisiana Energy Services* (Claiborne Enrichment Center), LBP-96-25, 44 NRC 331, 338-39 (1996).

would be equivalent to summary disposition, the Commission is unlikely to approve such a procedure.<sup>4</sup> Accordingly, the Presiding Officer should not require contentions.

HRI and the Staff unreasonably seek to impose a page limit and an extremely short time frame (October 30th for Intervenors on all issues) for preparing written presentations. HRI Brief at 4-5; Staff Brief at 6-7. The imposition of page limits would deny the Intervenors a meaningful opportunity to challenge the HRI license, by jeopardizing their ability to file complete presentations on all material issues.<sup>5</sup> HRI's and the Staff's proposed time frame is also completely unreasonable, given the number and complexity of issues that have been admitted for litigation in this case, the size of the record that must be reviewed, and the risk of long-lasting and significant impacts on the community, if an erroneous licensing decision is made. ENDAUM and SRIC have presented a reasonable schedule for written presentations, which should be adopted.

### **III. THE PROCEEDING SHOULD NOT BE HELD IN ABEYANCE.**

HRI uses its brief to inform the Presiding Officer and the parties that it is considering making a request to "place this entire proceeding in abeyance" because of two "recent developments." HRI Brief at 5. First, HRI asserts, the economic viability of the Crownpoint Project is threatened by the United States Enrichment Corporation's

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<sup>4</sup>See Commission Statement of Policy on Conduct of Adjudicatory Proceedings, CLI 98-12, 63 Fed. Reg. 41872, 41873-4 (August 5, 1998).

<sup>5</sup>Any such limitation is unnecessary. Intervenors are represented by competent counsel who are aware of the requirement to present material information in a succinct fashion.

("USEC's") plans to place 75 million pounds of uranium on the international market over the next five years. *Id.* Second, HRI reports the NRC just conducted public meetings to consider possible rulemaking proceedings for in-situ leach mining facilities. *Id.* at 5-6. HRI asserts it is "monitoring both of these situations and will act in a manner appropriate to protecting HRI's interest, as developments warrant." *Id.* at 6.

Although HRI has made no motion to which ENDAUM and SRIC are required to respond, ENDAUM and SRIC will strenuously oppose any bid by HRI to hold this proceeding in abeyance. This suggestion appears to be another ploy to delay this proceeding, which is ready to go forward. Litigation before the Board, as a matter of "basic fairness," must "be resolved expeditiously."<sup>6</sup> If this hearing is delayed, the Intervenor will be severely prejudiced. Since this case was noticed for hearing in 1994, ENDAUM and SRIC have devoted significant resources to preparing for this hearing, including the review and familiarization with the record and the hiring of expert witnesses who may not be available later. Residents of Crownpoint and Church Rock, whose health and livelihoods are affected by the HRI license, also have a reasonable expectation that the NRC will resolve the pending licensing proceeding sometime in the near future. Moreover, holding this proceeding in abeyance would not be appropriate,

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<sup>6</sup>*Kerr-McGee Chemical Corporation*, LBP 89-16, 29 NRC 508 (1989) (denying request to hold case in abeyance). See also *Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 & 2)* ALAB-277, 1 NRC 539, 552 (1975); Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 63 Fed. Reg. at 41,873 (licensing boards should use their authority to take "action appropriate to avoid delay" and establish schedules to promptly decide the issues before them.)

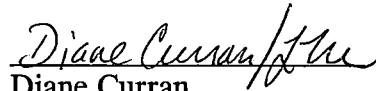
given the open-ended nature of HRI's concerns. The NRC has given no indication that it plans to seriously entertain the uranium industry's request that it abandon jurisdiction over ISL mining, and if it does, the process could take years. USEC's action in the uranium market will affect domestic production for years to come. It is simply not appropriate to stall this proceeding while HRI waits for the regulatory or economic winds of the future to change. The appropriate remedy for HRI's inaction is withdrawal of the license application and rescission of the license.

#### **IV. REQUEST FOR PRESENTATION AND REBUTTAL TIME.**

ENDAUM and SRIC request seventy-five minutes in which to make their presentation at the scheduling conference, reserving twenty minutes of that time for rebuttal.<sup>7</sup> ENDAUM and SRIC intend to work with the other Intervenor to reconcile their plans of analysis and to present a joint plan at the scheduling conference.

Respectfully Submitted,

  
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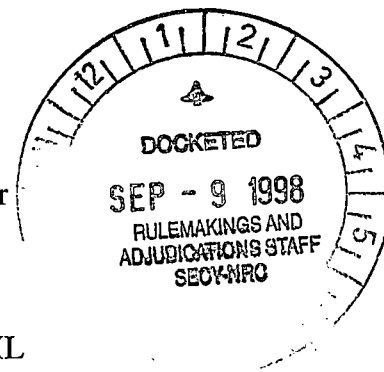
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<sup>7</sup>This request does not include time for addressing the issue of whether the proceeding should be held in abeyance, for which no motion has been filed.

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**CERTIFICATE OF SERVICE**

I hereby certify that:

On September 9, 1998, I caused to be served copies of the following:

**ENDAUM AND SRIC'S RESPONSE TO SCHEDULING BRIEFS**

upon the following persons by U.S. mail, first class, and in accordance with the requirements of 10 C.F.R. § 2.712. The parties marked by an asterisk (\*) were also served by facsimile. The envelopes were addressed as follows:

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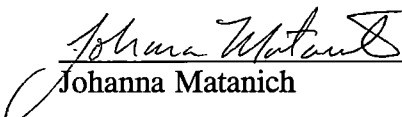
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