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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'99 JUN -8 P2:08

ATOMIC SAFETY AND LICENSING BOARD PANEL OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

Before Administrative Judges:
Peter B. Bloch, Presiding Officer
Thomas D. Murphy, Special Assistant

In the Matter of:)	
)	
)	
HYDRO RESOURCES, INC.)	Docket No. 40-8968-ML
2929 Coors Road, Suite 101)	ASLBP No. 95-706-01-ML
Albuquerque, NM 87120)	
)	

HYDRO RESOURCES, INC.'S REPLY TO
MEMORANDUM AND ORDER (QUESTIONS) WITH REGARD TO QUESTION 7

I. INTRODUCTION

Hydro Resources, Inc. ("HRI") respectfully submits the following reply to the Presiding Officer's Memorandum and Order (Questions), dated April 21, 1999 (hereinafter, "Memorandum"). As stated in HRI's previous filing regarding the Memorandum, the Presiding Officer posed eight (8) questions relating to Intervenor's allegations regarding groundwater, the adequacy of the Final Environmental Impact Statement, NUREG-1508 (Feb. 1997) ("FEIS"), and environmental justice. See Mem. at 1-4. Although the Presiding Officer indicated that parties other than the NRC Staff may choose not to answer questions one through seven, HRI responded to those questions to help clarify the record muddied by Intervenor's more than 8,000 pages of filings (now more than 9,000), to assist the Presiding Officer with relevant citations to the voluminous record, and to further the Commission's policy that "applicants for a license are [] entitled to a prompt resolution of disputes concerning their applications." See 63 Fed. Reg. 41,872 ("Policy on Conduct of Adjudicatory Proceedings; Policy Statement"). Intervenor did

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not respond to the questions initially, but rather, waited until after they had received the NRC Staff's and HRI's answers to file their answers, cloaking them as responses to the Staff's and HRI's answers. This most recent abuse of the NRC regulations and hearing process aside, HRI provides its response to the Presiding Officer's question 7 relating to the entire Crownpoint Uranium Project ("CUP") knowing full well that Intervenors will likely employ the same underhanded strategy as before and not file their answer (as opposed to just a response) until after HRI and the Staff have answered.

II. DISCUSSION

Question 7. For Churchrock Section 8 (and 28 days later for the entire CUP): What is your comparative analysis of the NRC Staff-Recommended Action to: (1) the non-action alternative, and (2) Alternative 2 (modified action) -- including a concise, descriptive summary of the advantages and disadvantages of the options? See CEQ "Memorandum to Agencies; Answers to 40 Most Asked Questions on NEPA Regulations," 46 Fed. Reg. 18,026; see also 40 C.F.R. § 1502.14 (Council on Environmental Quality, guidance). *Louisiana Energy Services, L.P. (Claiborne Enrichment Center)*, CLI-98-3, 47 NRC 77, 98 (and 97-99) (1998). In your answers to this question, please consider the answers to the questions set forth above in your overall discussion.

As HRI discussed in detail the requirements of National Environmental Policy Act of 1969 ("NEPA") 10 C.F.R. Part 51 with respect to the consideration of alternatives in an NRC environmental impact statement ("EIS") in its previous brief concerning question 7, we do not repeat that discussion in its entirety here.

HRI respectfully reminds the Presiding Officer, however, that no ISL license applicant has been required to submit an EIS in more than fifteen years. In each case, NRC has granted licenses to conduct in-situ leach uranium mining on the basis of environmental assessments, having determined that an EIS was unnecessary and having issued a Finding of No Significant Impact ("FONSI"). NRC's refusal to require EIS's of ISL license applicants is consistent with NRC's determination that in-situ leach mining is a low-risk activity and is consistent with the

“rule of reason” with which NEPA must be applied and the “risk-informed” decision-making advocated by NRC.¹ Here, HRI voluntarily chose to engage in the EIS process in this case to more completely evaluate the CUP’s potential environmental impacts.

Moreover, HRI respectfully reminds the Presiding Officer that he previously has considered Intervenors’ assertions regarding the adequacy of the FEIS:

As the Staff argues, the FEIS has not been brought seriously into question by the arguments of the Intervenors. Page 30 of the Staff Response declares:

“The 1997 FEIS contains over 250 pages of analysis, not including appendices. Even if all of the criticisms offered by ENDAUM and SRIC regarding the FEIS (see SRIC Disposal Brief at 38-53) were valid (which, as discussed below, they are not), their arguments would fall far short of establishing that the NRC failed to take the “hard look” required by the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq. (NEPA).”

Indeed, I have reviewed the FEIS carefully and I am impressed by its attention to technical detail and its thoughtful consideration of environmental risks. Intervenors have failed to demonstrate any significant deficiencies.

Hydro Resources, Inc., LBP 99-1 (waste disposal issues) (February 3, 1999) (emphasis added).

Finally, it is important to remember that the range of alternatives to be considered by the NRC Staff in an FEIS is limited as those alternatives are defined, in part, by 10 C.F.R. Part 51 (NRC’s NEPA regulations):

The possible actions which the Commission itself may take are limited [with] their scope determined in the first instance by the nature of the application. The available alternatives [to be considered] are to *grant the application, grant the application subject to certain conditions, or deny the application*, either with or without prejudice.

¹ See, e.g., HRI’s Waste Disposal Brief.

49 Fed. Reg. at 9353 (emphasis added).

With respect to the adequacy of the consideration of the limited alternatives, an NRC FEIS need not document every problem and alternative "from every angle," *Anson v. Eastburn*, 582 F. Supp. 18, 21 (S.D. Ind. 1983); *LES* at 99, as it "must be moored to 'some notion of feasibility.'" *Citizens Against Burlington, Inc. v. Busey*, 938 F. 2d at 195. Accordingly, NRC has adopted a reasonable view of the level of detail that must be reflected in the information presented in the EIS:

With respect to the requisite level of detailed information, the courts have held that the detail required ". . . is that necessary to establish that an agency in good faith objectivity has taken a sufficient look at the environmental consequences of a proposed action and at alternatives to that action."

49 Fed. Reg. at 9355, citing *Save Our Sycamore v. Metropolitan Atlanta, Etc.*, 578 F. 2d 573, 576 (5th Cir. 1978). "Information has been considered sufficient if it permits a reasoned choice to be made among different courses of action and if it provides enough detail to enable those who did not have a part in compiling the information to understand and consider meaningfully the pertinent environmental influences involved." 49 Fed. Reg. 9355. "[T]he environmental review mandated by NEPA is subject to a 'rule of reason' and as such need not 'include all theoretically possible environmental effects arising out of an action,' but rather 'may be limited to effects which are shown to have some likelihood of occurring.'" *Northern States Power Company* (Prairie Island Nuclear Generating Plant, Units 1 and 2), 7 N.R.C. 41, 1978 NRC LEXIS 117, *15 (1978); citing *Long Island Lighting Co. (Shoreham Nuclear Power Station)*, 6 AEC 831, 836 (1973) (affirmed by unpublished order of the District of Columbia Circuit, November 7, 1976; remanded on other grounds). "The appropriate inquiry here, then, is not into whether it is

‘theoretically possible’ . . . [w]hat must be decided instead is whether it is reasonably probable . . .” *Northern States Power Co.*, 1978 NRC LEXIS 117 at *17.²

Against this backdrop of NEPA’s legal requirements, we now turn to the Presiding Officer’s question and the FEIS for HRI’s response. As stated in HRI’s previous brief, HRI avers that the FEIS “reasonably informs the decisionmaker and the public of potential environmental impacts and allows appropriate comparison between alternatives.” *Citizens Concerned About Jet Noise*, *supra*. Moreover, HRI’s previous response to the Presiding Officer’s question number 7 was not limited to the Churchrock site.³ To engage in further independent comparative evaluation of the alternatives analyzed in the FEIS is, HRI believes, necessarily to engage inappropriately in second-guessing NRC staff. Consequently, HRI reiterates its previous response to this question and incorporates that response herein and defers to and joins in any further comparative evaluation conducted by NRC staff.

III. CONCLUSION

NEPA does not require the FEIS to spell out a “comparative evaluation” of alternatives, but rather to contain “analysis . . . sufficiently detailed to reveal the agency’s comparative

² NEPA does not require that the FEIS set forth a comparative evaluation of the alternatives, but rather that FEIS give “substantial treatment” to the costs and benefits of each of the “reasonable alternatives.” *Tongass Conservation Soc’y v. Cheney*, 924 F.2d 1137 (D.C. Cir. 1991); *see also*, *Citizens Concerned About Jet Noise, Inc. v. Dalton*, 1999 U.S. LEXIS 7651 *47 (E.D. Va. 1999) (“Plaintiff also claims the safety analysis in the FEIS fails to make a comparative analysis of the risks associated with each realignment scenario. Plaintiff’s arguments, however, fail both as a matter of law and as a matter of fact. . . . the court reiterates that questions of methodology are within an agency’s discretion (citation omitted). So long as the method chosen reasonably informs the decisionmaker and the public of potential environmental impacts and allows appropriate comparison between alternatives, the FEIS is adequately prepared.”); *Sierra Club v. Froehlke*, 534 F.2d 1289, 1294 (8th Cir. 1976) (“the analysis should be sufficiently detailed to reveal the agency’s comparative evaluation of the environmental benefits, costs and risks of the proposed action and each reasonable alternative.”) (emphasis added).

³ Intervenor’s recent, untimely, response to the Presiding Officer’s question number 7 devotes substantial space to complaining about the inappropriateness of directing this question specifically to Section 8. With regard to HRI’s response, at least, this complaint is unfounded.

evaluation of the . . . proposed action and each reasonable alternative.” *Froehlke, supra*. The FEIS contains such detailed analysis.

Respectfully submitted this 7th day of June, 1999.



Anthony J. Thompson

Frederick S. Phillips

David C. Lashway

SHAW PITTMAN

2300 N Street, N.W.

Washington, D.C. 20037-1128

Tel.: (202) 663-8000

Fax: (202) 663-8007

ON BEHALF OF HYDRO RESOURCES, INC.

2929 Coors Road, Suite 101

Albuquerque, New Mexico 87120

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing documents, HYDRO RESOURCES, INC.'S REPLY TO MEMORANDUM AND ORDER (QUESTIONS) WITH REGARD TO QUESTION 7, in the above-captioned proceeding were sent to the following by overnight mail on this 7th day of June, 1999.

Administrative Judge
Peter B. Bloch, Presiding Officer
Atomic Safety and Licensing Board
Two White Flint North
11545 Rockville Pike
U.S. Nuclear Regulatory Commission
Rockville, Maryland 20852

Adjudicatory File
Atomic Safety and Licensing Board
One White Flint North
11555 Rockville Pike
U.S. Nuclear Regulatory Commission
Rockville, Maryland 20852

Office of the Secretary
Attn: Rulemakings and Adjudications Staff
One White Flint North
11555 Rockville Pike
U.S. Nuclear Regulatory Commission
Rockville, Maryland 20852

Office of Commission Appellate
Adjudication
One White Flint North
11555 Rockville Pike
U.S. Nuclear Regulatory Commission
Rockville, Maryland 20852

Administrative Judge
Thomas D. Murphy
Atomic Safety and Licensing Board
11545 Rockville Pike
U.S. Nuclear Regulatory Commission
Rockville, Maryland 20852

Atomic Safety and Licensing Board Panel
One White Flint North
11555 Rockville Pike
U.S. Nuclear Regulatory Commission
Rockville, Maryland 20852

Jep Hill, Esq.
Jep Hill and Associates
816 Congress Avenue, Suite 1100
Austin, Texas 78701

Richard F. Clement, Jr., President
Hydro Resources, Inc.
2929 Coors Road, Suite 101
Albuquerque, New Mexico 87120

Mitzi Young
John Hull
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Douglas Meikeljohn
Johanna Matanich
New Mexico Environmental Law Center
1405 Luisa Street Suite 5
Santa Fe, NM 87505

Mr. Mark Pelizza
Vice President
URI, Inc.
Lockbox 12 – 12750 Merit Drive, Suite 1020
Dallas, TX 75251

Diane Curran, Esq.
Harmon, Curran, Spielberg & Eisenberg
2001 S Street, N.W., Suite 430
Washington, D.C. 20009

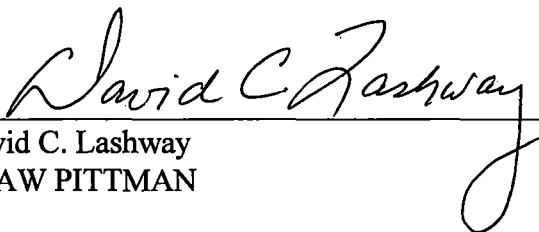
Mitchell W. Capitan, President
Eastern Navajo-Diné Against
Uranium Mining
P.O. Box 471
Crownpoint, New Mexico 87313

W. Paul Robinson
Chris Shuey
Southwest Research and Information Center
P.O. Box 4524
Albuquerque, New Mexico 87106

Marilyn Morris
c/o Roderick Ventura
and Samuel D. Gollis
DNA - People's Legal Services, Inc.
P.O. Box 306
Window Rock, AZ 86515

Grace Sam
c/o Roderick Ventura
and Samuel D. Gollis
DNA - People's Legal Services, Inc.
P.O. Box 306
Window Rock, AZ 86515

Administrative Judge Robin Brett
U.S. Geological Survey
12201 Sunrise Valley Drive
917 National Center
Reston, VA 20192



David C. Lashway
SHAW PITTMAN