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USNRC

September 30, 1998

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

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before Administrative Judge Peter B. Bloch, Presiding Officer

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))	
)	

**JOINT MOTION FOR RECONSIDERATION BY ENDAUM, SRIC, MARILYN
MORRIS AND GRACE SAM OF MEMORANDUM AND ORDER
(SCHEDULING AND PARTIAL GRANT OF MOTION FOR BIFURCATION)
OF SEPTEMBER 22, 1998**

INTRODUCTION

Pursuant to the Presiding Officer's Memorandum and Order (Scheduling and Partial Grant of Motion for Bifurcation) at 4 (September 22, 1998) ("September 22 Order") Intervenor Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC") Marilyn Morris and Grace Sam hereby seek reconsideration of the Presiding Officer's decision to require the filing by Intervenor of all evidentiary presentations by February 1, 1999. *Id.* at 3. In the interest of having some degree of uniformity and order in regards to scheduling, Marilyn Morris and Grace Sam support and join in this motion for reconsideration and proposal for a revised deadline.

By this motion, Intervenor together explain why they are unable to meet a

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February 1, 1999, deadline. They present herein elaboration of arguments presented in their scheduling briefs and at the scheduling conference, and discuss a recent Commission decision, which is directly on point with these issues, which was not available at the time of the conference. In light of these additional considerations, Intervenor propose a revised deadline of August 1, 1999. This alternative proposed deadline represents the minimum amount of time required by Intervenor to participate in this proceeding in a meaningful way by reviewing the record and delivering clear and carefully prepared written presentations.¹

BACKGROUND

In July of this year, in preparation for a scheduling conference, the Presiding Officer directed the Intervenor to provide, among other things, a plan of analysis and a discussion of proposals for the fair and efficient scheduling of this case.

Memorandum and Order (HRI Motion for Reconsideration and Motion for Partial Clarification) at 4 (July 1, 1998). In a subsequent order, issued on July 13, 1998, the Presiding Officer further explained that the requested plan of analysis "would permit [him] to assess the amount of time that [Intervenor] need to prepare their contentions (should I require them) and their written filings." Memorandum and Order (Announcing Scheduling Conference in Crownpoint, New Mexico, August 25-27;

¹The September 22 Order also bifurcates this proceeding to separate Section 8 for review. See September 22 Order at 2-3. ENDAUM and SRIC do not seek reconsideration of this portion of the order. However, ENDAUM and SRIC are concurrently filing with this motion a Request for Directed Certification of the Bifurcation Order.

Reporting on Content of July 10 Scheduling Conference) at 4.

In accordance with those orders, ENDAUM and SRIC presented a three-page plan of analysis, proposing a schedule designed to efficiently manage the number and complexity of issues raised. ENDAUM's and SRIC's Scheduling Conference Brief at 29-32 (September 2, 1998). The schedule included a filing date for presentations by ENDAUM and SRIC on each of their eighteen admitted areas of concern, with a 30-day response period, and a 15-day reply period.² The concerns were also arranged into two groups according to subject matter and preponderance of legal issues, with time allowed for oral argument if necessary, following the presentations on each group.

Marilyn Morris and Grace Sam presented a similar five page plan of analysis which closely parallels the plan presented by ENDAUM and SRIC. Scheduling Conference Brief of Marilyn Morris and Grace Sam, at 15-19 (September 2, 1998). Their proposal called for a similar method of staggered briefing as ENDAUM's and SRIC's, with eight groups of issues, with the last filing by Intervenor in October, 1999. *Id.* at 16-19. They explain their proposal allows for a systematic approach and that Marilyn Morris and Grace Sam are now seeking to retain expert witnesses for their written testimony. *Id.* at 15. Marilyn Morris and Grace Sam submitted at the scheduling conference that their plan of analysis was flexible in order to be more

²As ENDAUM and SRIC explained, they expect that their presentations will consist of testimony and supporting briefs. Most of their testimony will be by experts, with the possibility of some non-expert testimony. *Id.* at 30.

compatible with ENDAUM and SRIC's schedule and to avoid two different schedules in this matter.

In scheduling conference briefs filed by HRI and the NRC Staff, they suggested that the Presiding Officer require Intervenors to file their written presentations by October 30, 1998. HRI's Brief on Suggested Scheduling Submitted Pursuant to the Presiding Officer's July 30, 1998 Memorandum and Order (September 2, 1998); NRC Staff's Response to July 30 Order at 7 note 15 (August 31, 1998).

On September 17, 1998, the Presiding Officer conducted a scheduling conference at which, among other things, he entertained further arguments from the parties regarding their proposed schedules. The Presiding Officer expressed disappointment that the Intervenors had not provided more detail in support of their proposed schedule.³ ENDAUM and SRIC explained that they did not, in good faith, interpret the Presiding Officer's July 1 and July 13 orders to require such an extensive level of detail as now requested by the Presiding Officer at the Scheduling Conference. *See* Transcript of Scheduling Conference, September 17, 1998, at 238-241, 243-244. Moreover, they expressed deep reservations about revealing such information, which they believe to be part of their confidential litigation strategy. *Id.* at 241. Intervenors

³In his preliminary remarks, the Presiding Officer stated, "I really had hoped that I would have received a more complete analysis plan from the intervenors. What I'm looking for is something that would justify additional time, if they need it, which means specific tasks that have to be completed, including tasks that have already been completed during the time that the record has been available and tasks that have already been contracted for with specific efforts, so that I really have an idea of what is necessary for scheduling the work that they consider to be important for this case." Transcript of Scheduling Conference, September 17, 1998, at 145.

argued that, in any event, the time frame they have proposed is clearly necessitated by the number and complexity of the admitted issues, as well as the large volume of the record. *Id.* at 223-224, 238, 241, 243-244. Nevertheless, at the conclusion of the scheduling conference, the Presiding Officer announced that he would require the Intervenor to file all their written presentations by February 1, 1999. *Id.* at 251.

On September 22, 1998, the Presiding Officer issued an order which incorporates the February 1 deadline and adds several other provisions, including a requirement that Intervenor divide their presentations "into four roughly equal segments that will be filed on four dates that are roughly equally spaced between now and February 1, 1999." *Id.* at 4. The September 22 Order also provided for the filing of motions for reconsideration. *Id.* at 4.

ARGUMENT

I. THE PRESIDING OFFICER SHOULD RECONSIDER THE FEBRUARY 1 DEADLINE, AND THE FOUR PART SEGMENTATION OF THAT DEADLINE, BECAUSE IT WILL OPERATE TO DENY INTERVENORS A MEANINGFUL OPPORTUNITY TO PREPARE THEIR PRESENTATIONS AND PARTICIPATE IN THIS HEARING.

A. Standard for Reconsideration.

To gain reconsideration, a party must show that "there is some decision or some principle of law which would have a controlling effect and which has been overlooked or that there has been a misapprehension of the facts." *Georgia Power Co., et al.* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-94-31, 40 NRC 137,

140 (1994). A motion for reconsideration must consist of "an elaboration upon, or refinement of, arguments previously advanced, generally on the basis of information not previously available." *Babcock and Wilcox* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-35, 36 NRC 355, 357 (1992) (citations omitted).

Intervenors respectfully submit that reconsideration is warranted here. As discussed above, the Intervenors did not, in good faith, interpret the Board's orders of July 1 and July 13 to require a detailed elaboration of the their witnesses' schedules, or the time needed for each of their witnesses to prepare their testimony. Thus, they were not prepared, at the scheduling conference, to provide the type of detailed information required by the Presiding Officer to justify the reasonableness of their proposed schedule or demonstrate the unreasonableness of HRI's and the Staff's proposals. Intervenors have now gathered that information, which is presented here.

Moreover, this motion responds to new information provided by the Presiding Officer in the scheduling conference: that he is considering a Commission directive to complete licensing renewal cases within ten months, that he will not necessarily allow replies, and that he will not allow oral argument unless it is necessary on the record. See Scheduling Conference Transcript, September 17, 1998, at 169, 224-225, 244. In light of the Commission's decision in the *Calvert Cliffs* license renewal proceeding on September 17, 1998, the Presiding Officer's reliance on a ten-month scheduling standard was unfounded and the time requirements of expert witnesses must be taken

into account. *See In the Matter of Baltimore Gas & Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2)*, CLI 98-19, 47 N.R.C. _____ (1998) (the holding of this case is discussed in detail in Section I.B below). Intervenor's therefore propose an alternative deadline of August 1, 1999, which takes into account the Board's decision on these procedural matters.

B. The February 1 Deadline Does Not Provide Intervenor's With Enough Time to Participate in a Meaningful Way in This Proceeding.

As set forth in ENDAUM's and SRIC's Scheduling Brief, the hearing opportunity provided by the Atomic Energy Act must be a "meaningful" one. *Union of Concerned Scientists v. NRC*, 735 F.2d 1437, 1446 (D.C. Cir. 1984), *cert. den.* 469 U.S. 1132 (1985). Here, the schedule set by the Presiding Officer is so brief as to deprive Intervenor's of a meaningful hearing opportunity. A litigation schedule may not be so truncated as to violate an intervenor's right to procedural due process. *See Public Service Company of New Hampshire et al. (Seabrook Station, Units 1 and 2)*, ALAB-854, 25 NRC 417, 428 (1987) (holding that a three-and-one-half month pre-hearing schedule, established by a licensing board, in a formal hearing was so short it deprived the intervenors of their hearing rights, in violation of due process). The schedule set by the Presiding Officer violates these precepts, apparently based on misconceptions or inadequate information.

First, the Presiding Officer misconceives the February 1 deadline as a "balancing" of the schedules proposed by Intervenor's, HRI and the Staff. September

22 Order at 3-4. The Presiding Officer apparently did not consider the Intervenor's schedules to be unreasonable, but rather sought to balance them against HRI's and the Staff's proposals. However, rather than achieving a balance among reasonable schedules, the February 1 deadline is only three months later than the October 30 deadline proposed by HRI and the Staff; and fully 12 months earlier than the deadline requested by ENDAUM and SRIC. In this brief period of time, the Intervenor's are required to address all licensing issues common to the four proposed mining sites, all issues relating to Section 8, and all issues relating to NEPA. Even if the Intervenor's lawyers and experts were constantly available during the next four months, it would be impossible for them to do an effective job of reviewing the record and preparing factual testimony and legal briefs on every admitted issue in that brief period of time.

Second, the Presiding Officer explained his need to "persuade a Commission that thinks that license renewal cases should be finished in ten months." Transcript of Scheduling Conference, September 17, 1998 at 244. The Commission, in fact, sets the goal for resolving license renewal cases at thirty months, not ten months, as stated by the Presiding Officer. *In the Matter of Baltimore Gas and Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2)*, CLI 98-19, 47 N.R.C. ____, September 17, 1998.⁴ Apparently, the Presiding Officer was mistaken in using the ten month

⁴The Commission held that its grant of an extension of time in filing contentions would not compromise its ultimate goal of resolving license renewal issues within thirty months of the initial hearing notice. *In the Matter of Baltimore Gas and Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2)*, CLI 98-19, 47 N.R.C. ____, September 17, 1998. In this case, the initial hearing notice was issued in 1994. However, as part of the

parameter as a guide for setting this scheduling order.

Third, as a practical matter, Intervenor's experts and attorneys are unable to prepare testimony and briefs in time to meet the February 1 deadline. In a decision issued by the Commission on the date of the scheduling conference, the Commission allowed an Intervenor additional time to prepare contentions because its experts were unable to complete their review. *Id.* This decision sets a precedent that was not addressed in the parties' briefs and oral arguments.

ENDAUM and SRIC have contacted all of the technical consultants they have retained for this proceeding, and requested them to provide information regarding the tasks they need to perform in order to prepare their testimony, and how much time it will take to perform them. We have also asked the experts to provide us with information about their availability during the coming months, as none of these consultants work for ENDAUM and SRIC exclusively and they must meet previously established commitments to other clients.

ENDAUM and SRIC have previously expressed their concern about revealing confidential and legally protected information regarding their litigation strategy in this case. *See* Transcript at 241. Nevertheless, in the interest of demonstrating the impracticality and injustice of a four-month schedule for preparing testimony in this

unusual circumstances of this case, this proceeding was put on hold for several years while the NRC Staff conducted its analysis, and a hearing was not granted until May 13, 1998. *In the Matter of Hydro Resources Inc.*, LBP 98-9, 47 N.R.C. 261, 286-287 (1998). Examination of the time that has lapsed in this case should commence at the time this hearing was granted, not the initial notice from 1994.

case, the following information is provided regarding the time needed by experts to prepare their testimony, and the schedule on which they can provide it. These experts are not all listed by name because that information does not appear relevant at this time, and because Intervenors are concerned that one-sided disclosure of the identity of their experts would give the opposing parties an unfair advantage in the litigation. However, if the Presiding Officer would like to have this information, it can be provided *in camera*.

Notably, Marilyn Morris and Grace Sam did not retain counsel until this past summer, and they have just begun their search for expert consultants. The Intervenors intend to prepare joint filings whenever possible, but they are not all the same party, and are likely to have individual positions on many issues. The following experts have been contacted by ENDAUM and SRIC:

Expert 1 — Expert 1 is a cultural resources specialist who states that he/she is teaching a college class this semester and cannot spend time on this matter until December, 1998.⁵ When available, Expert 1 states that he/she will need to 1) review relevant documents, 2) contact participants in cultural resources review processes for this project, 3) evaluate participants' responses, 4) determine whether necessary parties were omitted from consultation, which Expert 1 believes will require sensitive and diplomatic exchanges with the relevant tribal governments, and 5) ascertain

⁵Telephone conversation between Johanna Matanich and Expert 1, September 22, 1998.

existence of burial sites at project locations.⁶ Expert 1 estimates this work could not be completed until Spring, 1999.⁷

Expert 2 — Expert 2 is a air emissions expert for ENDAUM and SRIC. Expert 2 will require time to 1) review the license application and FEIS, which requires an estimated twenty hours of work; 2) research radon background data for the area, which will require approximately twenty hours; 3) perform MILDOS calculations and compare results with batch models, which will require approximately twenty hours, and; 4) perform a radon-222 risk assessment, which will require twenty hours.⁸

Expert 2 states that given other commitments, it will be difficult to perform this work by the end of January, 1999, and that the end of March, 1999, is a more realistic goal.⁹

Expert 3 — Expert 3 is Michael G. Wallace, a hydrology expert for ENDAUM and SRIC. Mr. Wallace is only available to work a maximum of eight hours per week for ENDAUM and SRIC, and has contractual obligations for the rest of his time.¹⁰ To complete his analysis, at a minimum, he will need to: 1) obtain, review and evaluate

⁶*Id.*

⁷*Id.*

⁸Correspondence from Expert 2 to Diane Curran, September 26, 1998.

⁹*Id.*

¹⁰Telephone conversations between Chris Shuey, SRIC staff, and Michael Wallace, September 19 and 22, 1998.

structural cross-sections and structural contour maps for each of the proposed mining sites to evaluate HRI's assertions that faulting does not occur in the mining zones¹¹; 2) evaluate mine-zone confinement at each site by using HRI's pump test data, adjusting for effects of sand-channel heterogeneity, and applying "leaky aquifer" interpretive model; and 3) teaming with ENDAUM's and SRIC's other geotechnical experts to model excursion scenarios. Mr. Wallace states that he estimates that this work will take a minimum of 200 hours and could take three times that amount of time if certain data, such as structural cross-sections, must be newly compiled from drillers' logs.¹²

Expert 4 — Expert 4 is a geochemist consultant for ENDAUM and SRIC, who states that he/she can work only eight hours per week on this project because of the obligations of his/her permanent full-time job.¹³ Further, he/she states that to complete an analysis of HRI's project, at a minimum, he/she would have to: 1) summarize all geochemical work done to date, highlighting deficiencies inherent therein; 2) develop and apply a geochemical model to simulate lixiviant reactions and aquifer recovery at

¹¹Mr. Wallace has noted on two previous occasions in this proceeding that structural cross-sections and structure contour maps are not included in any of the documentation he has reviewed, even though they were referenced by HRI's hydrology consultants and are geological interpretative data essential for a thorough evaluation of the hydrogeology of the mining sites and mining zones. See, e.g., Wallace 2nd Affidavit, ¶¶ 6-10 (March 4, 1998), and Wallace 3rd Affidavit, ¶9 and n. 8 (September 1, 1998)

¹²See, *supra*, n. 6.

¹³Telephone conversations between Chris Shuey, SRIC Staff, and Expert 4, September 22 and 24, 1998.

each of the mining sites¹⁴; and 3) team with ENDAUM's and SRIC's other geotechnical consultants to model excursion scenarios. He/she states that at least 200 hours, and possibly more, would be needed to complete this work.

Expert 5 — Expert 5 is an in situ leach mining expert retained by ENDAUM and SRIC only since the scheduling conference on September 18. Expert 5 is just beginning to analyse HRI's project, and needs time to review the project documents, relevant affidavits, conduct a site visit, consult with other experts, and quite possibly to conduct computer modeling.¹⁵ At a minimum, Expert 5 will evaluate HRI's repeated claims that ISL mining is "environmentally benign" and that HRI's proposed 1-percent bleed rate is sufficient to maintain control of lixiviant.¹⁶

Expert 6 — Expert 6 is an economist retained as an expert by ENDAUM and SRIC. Expert 6 must research the economic aspects of this project, including a review of current uranium market conditions, evaluation of URI/HRI corporate financial statements and HRI cost calculations, and the cost/benefit analysis of the FEIS.¹⁷

¹⁴*Id.* Expert 4 further states that this second task ideally should involve collecting and analyzing samples of ground water from boreholes located at the Mobil Section 9 and Teton pilot leach sites located near the proposed Unit 1 and Church Rock mine sites, respectively, in order to gain a real-world understanding of aquifer recovery following in situ leaching and to inform a geochemical model with site-specific and relevant operational data. Based on his/her review of documentation in this proceeding, Expert 4 states that he/she does not believe that HRI or the NRC Staff conducted such confirmatory field work. See, FEIS at 4-31 through 4-39.

¹⁵Telephone conversation between Expert 5 and Johanna Matanich, September 22, 1998.

¹⁶Telephone conversations between Chris Shuey, SRIC Staff, and Expert 5, September 19 and 21, 1998.

¹⁷Telephone Conversation between Expert 6 and Johanna Matanich, September 23, 1998.

Given these tasks, the limited availability of other staff members at his/her firm, and his/her other obligations, Expert 6 states that it will be difficult to complete this work by mid-January.¹⁸

It is evident that few of the experts listed above will complete their work for ENDAUM and SRIC before February 1, 1999, or, if they are so required, will be able to carry out less than the minimum effort they believe is warranted technically, thereby prejudicing ENDAUM's and SRIC's right to a fair and complete hearing. Moreover, for those who are able to finish a minimally complete analysis, it will be exceptionally difficult for ENDAUM and SRIC to synthesize those experts' findings into filings for staggered scheduling before February 1, 1999. The work of these experts forms the backbone of Intervenor's areas of concern. If ENDAUM and SRIC cannot present this evidence, their opportunity for a meaningful hearing of their issues is lost.

Intervenors also are seeking to retain other experts in the following areas: risk-assessment specialist, environmental health specialist/toxicologist, and emergency response expert. To date, they have not been successful. The four month deadline imposed by the Presiding Officer will preclude the use of any additional experts.

C. Requiring Intervenor's to complete their filings in four months will excessively tax the resources of Intervenor's and their Counsel.

Marilyn Morris' and Grace Sam's counsel, DNA-People's Legal Services, Inc., is a

¹⁸Correspondence from Expert 6 to Johanna Matanich, September 28, 1998.

non-profit law firm. ENDAUM, SRIC and their lead counsel, the New Mexico Environmental Law Center (NMELC), are also all non-profit organizations, whose resources are not unlimited. For example, Mitchell Capitan, president of ENDAUM, is employed full-time at a separate job.¹⁹ He has exhausted his reserve of annual leave and cannot take time off during the week to work for ENDAUM.²⁰ Chris Shuey is a full-time SRIC staff member who has administrative obligations for the organization in addition to his technical duties on the Crownpoint project and other site-specific issues. He is also pursuing graduate studies at the University of New Mexico.

NMELC is the only law firm in New Mexico providing free legal services on environmental cases. Diane Curran is litigating other cases as well, including other cases before the NRC. This proceeding is by no means the only matter on which the Intervenor's officers, staffs and counsel must expend their resources in the next four months.

The hearing record was not identified in this case until June 11, 1998. See letter from NRC Staff counsel John T. Hull to Administrative Judges Bloch and Murphy, June 11, 1998. Since that time, Intervenor's have expended a great deal of time responding to HRI's motion for bifurcation of this proceedings, making arrangements for the Presiding

¹⁹See, Affidavit of Mitchell Capitan, ¶6, attached as Exhibit A to ENDAUM Motion to Respond (March 20, 1995), and Affidavit of Mitchell Capitan, ¶4, attached as Exhibit 6 to ENDAUM-SRIC Motion for Stay (January 15, 1998).

²⁰Telephone conversation between Johanna Matanich and Mitchell Capitan, September 22, 1998.

Officer's activities in Crownpoint and Churchrock, New Mexico, and in preparing briefs for the scheduling conference. ENDAUM and SRIC have reviewed the hearing file and submitted a list of items to the NRC Staff they believe should be added to the record. They may need to submit a motion to supplement the record if this matter cannot be worked out informally. ENDAUM and SRIC developed their case somewhat in preparing their motion for a stay in January, 1998. However, those affidavits focused on broad problems, and particularly the problems associated with the Crownpoint and Unit 1 mine sites. Intervenor's still have quite a bit of work remaining to develop arguments related to Section 8.

In conclusion, the February 1, 1999, deadline is unfair, unreasonable, prejudicial, and, as a practical matter, simply cannot be met without an abandonment of many of the Intervenor's areas of concern. Their expert witnesses will not be able to prepare their analyses in time for Intervenor's to prepare careful filings. Most certainly, Intervenor's will not be able to submit expert testimony if they are required to submit four equally-spaced filings before February, 1999. If they are required to submit four filings, the practical effect will be that Intervenor's will be required to merely repackage the areas of concern and the evidence ENDAUM and SRIC presented with their stay motion in January, 1997. Intervenor's will not be able to submit the evidence and testimony they anticipate will support their concerns. Based on the recent decision of the Commission in the *Calvert Cliffs* license renewal proceeding, a delay is warranted when intervenor

experts are unable to complete their review and the Intervenor's proposed schedules do not come close to the length of time (thirty months) the Commission expects is required for license renewals.

II. ENDAUM AND SRIC SEEK A MORE REASONABLE SCHEDULE.

As a reasonable alternative, ENDAUM and SRIC propose that all of their written presentations be filed by August 1, 1999. Based on information provided by ENDAUM's and SRIC's experts, this is the minimally required time in which to prepare testimony and briefs.²¹ As discussed above, few of the experts are able to devote themselves full-time to this work due to their regular jobs and other commitments. Most estimate they will be unable to complete their work until next spring. Moreover, the work they need to undertake is time-consuming. For example, our hydrologist needs to review new documents (including documents we have requested the Staff add to the hearing record), and conduct his own analyses of the data. Yet, he is limited to spending eight hours per week on this work. See Section I.B. above.

ENDAUM and SRIC propose to file testimony and briefs in three roughly equal parts, spaced three months apart. The filings would begin on February 1, and end on August 1, 1999. These filing dates are based on the availability and requirements of the

²¹In their Scheduling Conference Brief, ENDAUM and SRIC proposed to file the first testimony on October 30, 1998, concluding with the last filing on December 20, 1999. This schedule was based on ENDAUM's and SRIC's reasonable estimate of how much time it would take to prepare testimony, but did not take into account the experts' actual availability. Having communicated personally with each expert regarding his or her availability, it is now clear that the proposal to file the first testimony in October was overly optimistic. Thus, the proposed filing date for the first set of testimony and briefs is changed to February 1, 1999. However, Intervenor's have shortened the schedule for the final submission of testimony and briefs, from December, 1999, to August 1, 1999.

experts for time to prepare. The schedule gives the experts a minimally needed amount of time to prepare, given the tasks that they must perform in order to prepare testimony, and given their previous commitments in other matters.

In light of the Presiding Officer's statement that he does not intend to allow replies without specific approval, and will not entertain oral argument unless he deems it necessary on the record, Intervenor's have shortened the overall schedule for presentation of testimony and briefs proposed in their Scheduling Conference Brief by four months.

Intervenor's will tailor their filings to comply with the Presiding Officer's order granting partial bifurcation. Consistent with that order, they understand that at the end of the schedule set forth below, more filing dates may be ordered by the Presiding Officer, or some additional issues may be placed in suspense. They propose the following schedule:

February 1999 —

- Performance-based licensing, and related concerns
- Liquid waste disposal, surface water protection; adequacy of consideration in the EIS, and related concerns

May 1999 —

- Compliance with NHPA; NGPRA; related cultural resource issues; adequacy of consideration in EIS, and related concerns
- Air emissions controls; adequacy of consideration in EIS, related concerns
- Transportation of radioactive and hazardous materials and wastes; adequacy of consideration in EIS; related concerns
- HRI qualifications in training and experience; adequacy of consideration in EIS; related concerns

August 1999 —

- Groundwater protection, adequacy of financial assurance, adequacy of

information and consideration of groundwater impacts in EIS, and related concerns

- NEPA consideration of action alternatives; cumulative impacts of project; segmentation of assessment of impacts; consideration of mitigation; failure to supplement FEIS; related concerns
- Environmental justice; consideration of health impacts; impacts on property values in low income minority community; designation of Navajo Nation EPA as cooperating agency
- NEPA purpose, need and cost-benefit analysis, consideration of economic risks and impacts; no action alternative; related concerns

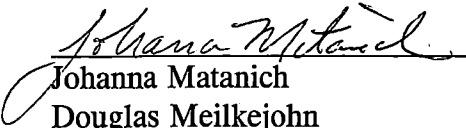
HRI's response to each filing would be due within forty-five days (given the complexity and numerosity of issues and evidence) and the Staff's response within seven days of HRI's filing. Intervenor would retain the option of filing motions for permission to make replies to the HRI and NRC Staff responses.

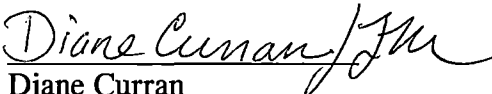
CONCLUSION

For the foregoing reasons, Intervenor respectfully request the Presiding Officer to modify the September 22 Scheduling Order to allow Intervenor to submit their written presentations by August 1, 1998 in accordance with their proposed schedule.

Respectfully Submitted this 30th day of September, 1998,

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NUCLEAR REGULATORY COMMISSION
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2929 Coors Road)	
Suite 101)	ASLBP No. 95-706-01-ML
Albuquerque, NM 87120)	
)	

CERTIFICATE OF SERVICE

I hereby certify that:

On September 30, 1998, I caused to be served copies of the following:

JOINT MOTION OF ENDAUM, SRIC, MARILYN MORRIS AND GRACE SAM FOR
RECONSIDERATION OF MEMORANDUM AND ORDER (SCHEDULING AND
PARTIAL GRANT OF MOTION FOR BIFURCATION) OF SEPTEMBER 22, 1998

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 e-mail. The envelopes were addressed as follows:

Office of the Secretary*
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Staff

Administrative Judge*
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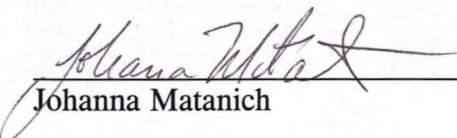
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