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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

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))	
)	

**ENDAUM AND SRIC'S REQUEST FOR CLARIFICATION
OF ISSUES TO BE ADDRESSED PURSUANT TO SCHEDULING ORDER**

INTRODUCTION

Intervenors Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC") hereby request that the Presiding Officer clarify the application of the September 22, 1998 Memorandum and Order ("September 22 Order") to the issue of consideration of the cumulative impacts of the proposed Hydro Resources, Inc. ("HRI") Crownpoint uranium project. This request is made pursuant to the Nuclear Regulatory Commission's ("NRC's") October 23, 1998, Order, which indicated that if the Intervenors have questions about specific issues to be presented in the first phase of this proceeding, they should direct those questions to the Presiding Officer. ENDAUM and SRIC believe that the cumulative impacts issue, which addresses project impacts, from all mine sites, should be included in the initial hearing phase of the proceeding. The September 22 Order is unclear on this issue, and a subsequent Order of the Presiding Officer creates additional uncertainty.

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I. THE INTERVENORS SEEK CLARIFICATION ON WHETHER TO PRESENT EVIDENCE CONCERNING THE IMPACTS OF THE PROJECT AT EACH SITE TO DEMONSTRATE THE PROJECT'S CUMULATIVE IMPACTS.

The September 22 Order states that the Intervenor may present evidence concerning any issue within the scope of their germane concerns that "challenges the validity of the license issued to HRI" and "with respect to any aspect of the HRI license concerning operations on Church Rock Section 8 or with respect to the transportation or treatment of materials extracted from Section 8." September 22 Order, 2-3. The Order also states, however, that "concerns relating only to the license conditions affecting Church Rock Section 17 or to Unit One or to one of the Crownpoint sections, may not now be presented as part of the first phase of this proceeding." *Id.* at 3.

The Intervenor is concerned that this latter statement could be interpreted to mean that they cannot file presentations demonstrating the cumulative impacts of project activities. Previously, in responding to HRI's motion to bifurcate and in preparing for the scheduling conference in this case, ENDAUM and SRIC argued that HRI's bifurcation proposal violated NEPA. ENDAUM's and SRIC's Opposition to HRI's . . . Request for Bifurcation (June 22, 1998); ENDAUM's and SRIC's Scheduling Conference Brief, at 19-25 (September 2, 1998). In particular, ENDAUM and SRIC pointed out that cumulative impacts could not be properly addressed under bifurcation. Scheduling Conference Brief at 22-23. The Presiding Officer acknowledged this conflict in discussing the bifurcation issue, at the Scheduling

Conference.¹

But the subsequently-issued September 22 Order does not mention NEPA nor does it specifically address how the cumulative impacts issue can be resolved within the context of its bifurcation order. Intervenor's concluded that the cumulative impacts would be a general licensing issue, which must be decided before a decision can issue on Section 8. Such a conclusion is logical, given that if briefing of the cumulative impacts issue were scheduled after a Section 8 decision which approves the license application, the Section 8 decision would need to be stayed or deferred until consideration of all the cumulative impacts, for all the project sites, was complete. *See* Section II below. Presumably, there would be little practical benefit in proceeding in this manner. The cumulative impacts issue was therefore listed for briefing in February, 1999, in ENDAUM's and SRIC's notice of written presentation dates and content. ENDAUM's and SRIC's Notice in Response to Memorandum and Order (Scheduling and Partial Grant of Motion for Bifurcation of September 22, 1998) at 3

¹The Presiding Officer questioned Mr. John Hull, counsel for the NRC Staff, as follows, "If the intervenors challenge the cumulative impacts in the environmental impact statement, would that be prohibitive to them or permitting to them under a bifurcation?" Trans. Scheduling Conference at 60 (September 17, 1998). Later, the Presiding Officer stated,

Just a comment before I want Mr. Hull to start. It occurred to me that it was possible that we could permit filings that rate to true cumulative impacts and then if the filing did not relate to a true cumulative impact, it would be subject to a motion to strike. I just want you to consider that as a possibility that might be acceptable to all the parties.

Id. at 64.

(October 2, 1998).²

However, two of the Presiding Officer's statements in the October 13, 1998 Memorandum and Order (Reconsideration of the Schedule for the proceeding) ("October 13 Order"), have caused ENDAUM and SRIC to be less certain that the cumulative impacts are to be included in the February 1, 1999 filing. First, the October 13 Order speculates that the Intervenor's workload should be reduced by the bifurcation order. October 13 Order at 5.³ Obviously, the cumulative impacts issue requires a large amount of work for the Intervenor's. Consequently, their workload will not be reduced by the September 22 Order. For example, the groundwater issues on which ENDAUM and SRIC will present written presentations on January 7, 1999, cannot, except for general licensing issues, address mine sites other than Section 8.

² Neither the Staff nor HRI has objected to the inclusion of this issue in ENDAUM's and SRIC's notice.

³The October 13 Order states,

While considering the matters before me, I have concluded that there is a relationship between "bifurcation" or efficient scheduling and the appropriateness of deadlines suggested by Intervenor's for their written presentations. Since the subjects Intervenor's will cover before February 1 are limited because of my scheduling order, this should represent a reduced workload for Intervenor's -- although they have not explicitly addressed that question in the analysis plan they filed in support of their request for a changed filing schedule. In particular, Intervenor's will not have to present any information prior to February 1, 1999 unless it relates to the invalidity of the entire license or to operations on Churchcock Section 8.

October 13 Order at 5.

Still, in addressing the cumulative impacts issue, ENDAUM and SRIC will need to have their experts prepare detailed testimony about the potential impacts to groundwater on the other mine sites. Whatever time and resources are saved in preparation for the January 7, 1999 filing, they will need to be expended for the February 1, 1999 filing, to properly address the cumulative impacts issue. The language in the October 13 Order, therefore, indicates that the Presiding Officer may not allow Intervenor's to address cumulative impacts.

Second, the October 13 Order dismisses NEPA concerns by adopting HRI's statement,

Intervenor's misunderstand the September 22 Order. The order in no way segments the NEPA process, but rather merely sets a logical schedule for reviewing all of Intervenor's' concerns pertaining to the HRI license, including the environmental impact statement drafted by NRC. The purpose of the Order is merely to schedule issues for consideration beginning with those that are presently ripe for review, particularly activities relating to Section 8 and any issues pertinent to the project generally.

October 13 Order at 4.

This language indicates that the bifurcated schedule can break up NEPA issues for consideration, and that NEPA arguments addressing issues broader in scope than Section 8 will not be addressed in the February 1, 1999 filing.

The Intervenor's therefore request that the Presiding Officer clarify the Order to indicate that presentation of evidence of impacts in areas other than Church Rock Section 8 is appropriate as part of the Intervenor's' presentation concerning the

cumulative impacts of the proposed project.

II. THE NRC IS REQUIRED TO CONSIDER THE CUMULATIVE IMPACTS OF THE PROPOSED PROJECT PRIOR TO DECIDING THE ADEQUACY OF THE LICENSE WITH RESPECT TO ANY PARTICULAR MINE SITES.

As described in the Licensing Board decision granting the Intervenor's request for a hearing, HRI has applied for and received a license to build and operate several in situ leach mines and a uranium mill in Church Rock and Crownpoint, New Mexico, a project known as the "Crownpoint Uranium Project." *Hydro Resources Inc.*, LBP 98-9, 47 N.R.C. 261, 263-267 (1998). The Presiding Officer has indicated the applicability of NEPA to the project by admitting the Intervenor's Areas of Concern pertaining to lack of compliance with NEPA. *Id.* at 282-283.

In response to HRI's motion for bifurcation, their scheduling conference brief, and related filings, ENDAUM and SRIC have argued that bifurcation itself violates NEPA.⁴ For the same reasons, deferral of the cumulative impacts analysis issue, until a Section 8 decision is rendered in this case, would violate NEPA.

A. THE NRC MUST CONSIDER THE CUMULATIVE IMPACTS OF THE PROJECT.

The FEIS demonstrates the need for the NRC to consider the cumulative

⁴The Intervenor's have presented briefs on this issue three times. See ENDAUM's and SRIC's Opposition to HRI's . . . Request for Bifurcation (June 22, 1998); ENDAUM's and SRIC's Scheduling Conference Brief (September 2, 1998); ENDAUM's and SRIC's Response to Scheduling Briefs, at 1-2 (September 9, 1998). In addition, on September 17, 1998, Intervenor's presented their oral arguments regarding bifurcation.

impacts of the project. The FEIS refers to the regulations of the Council on Environmental Quality for the definition of cumulative impacts and devotes seven pages to an analysis of the project's cumulative impacts. FEIS, 4-120; 4-120-127. Although this analysis is superficial and inadequate, its presence in the FEIS does show that the cumulative impacts of the project must be considered. In addition, the Presiding Officer has admitted the Intervenor's Concern pertaining to cumulative impacts of the project. *Hydro Resources Inc.*, LBP 98-9, 47 N.R.C. at 282-283.

This position is consistent with NEPA and its implementing regulations, and with the NRC's regulations. NEPA requires the NRC to take environmental values into account. Calvert Cliffs Coordinating Committee v. U.S. Atomic Energy Commission, 449 F.2d 1109, 1112 (D.C. Cir. 1971), *cert. denied*, 404 U.S. 942 (1972) (holding invalid Atomic Energy Commission regulations because of the Commission's failure to comply with NEPA mandated procedures [449 F.2d 1129].) The NRC also "has recognized its obligation to comply with [NEPA] by promulgating regulations governing licensing and regulatory policy and procedures with respect to environmental protection." Susquehanna Valley Alliance v. Three Mile Island, 619 F.2d 231, 239 (3rd Cir. 1980) (reversing lower court dismissal of claim filed against NRC under NEPA [619 F.2d 241-242].)

B. CONSIDERATION OF CUMULATIVE IMPACTS REQUIRES ANALYSIS OF IMPACTS AT EACH SITE OF MINING AND OTHER ACTIVITIES.

The FEIS demonstrates the need to take into account impacts at each of the sites involved in order to determine the cumulative impacts of the entire proposed project.

The section on cumulative impacts analysis addresses⁵ fifteen separate areas, air quality and noise, geology and soils, groundwater, surface water, transportation, health physics and radiological impacts, ecology, land use, socioeconomics, aesthetics, cultural resources, and environmental justice. FEIS, §§4.13.1-4.13.12, 4-120-127.

The FEIS's cumulative impacts analysis for each of these areas is based on the impacts that will result from the HRI project activity at each of the mining and processing sites and on the impacts that will be caused by other activities. For example, the cumulative impacts analysis for air quality and noise (§4.13.1, FEIS, 4-121) refers to §4.1 of the FEIS for an analysis of the impacts that the HRI project will have on air quality and noise, and it states that existing air quality is good. That section sets forth, in part in Table 4.1, the air quality and noise effects that are likely to result at Church Rock, Unit 1, and Crownpoint. FEIS, 4-1. Similarly, the cumulative impacts discussion pertaining to geology and soils (§4.13.2, FEIS, 4-121) refers to §4.2. That section addresses impacts on the soils and geology of activities at each site (see §§4.2.1.1

⁵ The Intervenor's position is that the analyses of impacts and cumulative impacts presented in the FEIS are inadequate, and their point that the FEIS demonstrates the need for a cumulative impacts analysis involving consideration of effects at each project site should not be construed as changing that position.

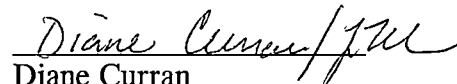
(Crownpoint), 4.2.1.2 (Unit 1), and 4.2.1.3 (Church Rock), FEIS, 4-6-12. Finally, the cumulative impacts analysis concerning groundwater (§4.13.3, FEIS, 4-121-123) addresses impacts at Crownpoint, Unit 1, and Church Rock, and refers to §4.3 (FEIS, 4-15-63), which also refers to effects at each of the three sites.

The point, as demonstrated by the FEIS, is that consideration of the cumulative impacts of the proposed project on any given resource depends upon an analysis of the impacts on that resource of each aspect of the proposed project.

CONCLUSION

The Intervenor therefore request clarification from the Presiding Officer on the presentation of site specific evidence for the purpose of presenting complete arguments in ENDAUM's and SRIC's cumulative impacts analyses in their February 1, 1999 filing.


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ATOMIC SAFETY AND LICENSING BOARD PANEL

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before Administrative Judge Peter B. Bloch, Presiding Officer

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CERTIFICATE OF SERVICE

I hereby certify that:

On November 2, 1998, I caused to be served copies of the following:

ENDAUM and SRIC's Request for Clarification of Issues to be Addressed Pursuant to Scheduling Order

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:

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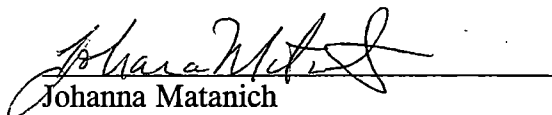
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