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May 13, 1999
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

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'S AND SRIC'S MOTION FOR RECONSIDERATION
OF MAY 3, 1999 ORDER
EXPEDITED REVIEW REQUESTED**

INTRODUCTION

Eastern Navajo Diné Against Uranium Mining (ENDAUM) and Southwest Research and Information Center (SRIC) hereby move the Commission to reconsider its Order of May 3, 1999, to the extent that the Order, in paragraph 4, directs each party to file a single petition for review, not to exceed thirty pages, within 14 days of the Presiding Officer's final decision on the Section 8 portion of the Crownpoint Uranium Project. This motion is made pursuant to 10 C.F.R. §§ 2.1237(a) and 2.730. The page limit restriction of thirty pages reduces, by approximately half, the page limit provided by the procedural rules governing petitions for review. This reduction both violates the rules of procedure and infringes on Intervenors' right to a meaningful hearing opportunity.

U.S. NUCLEAR REGULATORY COMMISSION
RULEMAKINGS & ADJUDICATIONS STAFF
OFFICE OF THE SECRETARY
OF THE COMMISSION

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FACTS

In this Subpart L proceeding, Intervenors ENDAUM and SRIC have submitted written presentations on ten topical areas of concern.¹ As of May 3, 1999, the date of the Commission's Order, the Presiding Officer had issued partial initial decisions on

¹ The ten areas were presented as follows: (1) Eastern Navajo Diné Against Uranium Mining's and Southwest Research and Information Center's Brief in Opposition to Hydro Resources, Inc.'s Application for a Materials License with Respect to: Liquid Waste Disposal (November 9, 1998); (2) Eastern Navajo Diné Against Uranium Mining's and Southwest Research and Information Center's Brief in Opposition to Hydro Resources, Inc.'s Application for a Materials License with Respect to: Performance Based Licensing Issues (December 7, 1998); (3) Eastern Navajo Diné Against Uranium Mining's and Southwest Research and Information Center's Brief in Opposition to Hydro Resources, Inc.'s Application for a Materials License with Respect to: Compliance with the National Historic Preservation Act, Native Graves Protection and Repatriation Act and related Cultural Resource Issues (December 7, 1998); (4) Eastern Navajo Diné Against Uranium Mining's and Southwest Research and Information Center's Brief in Opposition to Hydro Resources, Inc.'s Application for a Materials License with Respect to: Financial Assurance for Decommissioning (January 11, 1999); (5) Eastern Navajo Diné Against Uranium Mining's and Southwest Research and Information Center's Brief in Opposition to Hydro Resources, Inc.'s Application for a Materials License with Respect to: Hydro Resources, Inc.'s Lack of Technical and Financial Qualifications (January 11, 1999); (6) Eastern Navajo Diné Against Uranium Mining's and Southwest Research and Information Center's Brief Regarding Radioactive Air Emissions at the Crownpoint Project (January 11, 1999); (7) Intervenors' Amended Written Presentation in Opposition to Hydro Resources, Inc.'s Application for a Materials License with Respect to: Groundwater Protection (January 18, 1999); (8) ENDAUM's and SRIC's Written Presentation in Opposition to Hydro Resources, Inc.'s Application for a Materials License with Respect to: NEPA Issues Concerning Project Purpose and Need, Cost/Benefit Analysis, Action Alternatives, No Action Alternative, Failure to Supplement EIS, and Lack of Mitigation (February 19, 1999); (9) Eastern Navajo Diné Against Uranium Mining's and Southwest Research and Information Center's Brief in Opposition to Hydro Resources, Inc.'s Application for a Materials License with Respect to: Cumulative Impacts and Segmentation of Consideration of Impacts (February 19, 1999); (10) Eastern Navajo Diné Against Uranium Mining's and Southwest Research and Information Center's Brief in Opposition to Hydro Resources, Inc.'s Application for a Materials License with Respect to: Environmental Justice Issues (February 19, 1999).

four of those areas of concern: Liquid Waste Disposal, Performance Based Licensing Issues, Cultural Resources Protection Issues, and Financial Assurance for Decommissioning. LBP-99-1; LBP-99-9; LBP-99-10; LBP-99-13. Each partial initial decision was adverse to the Intervenor's interests, and Intervenor's filed petitions for review for each of the partial initial decisions.²

The May 3 Order directs the parties to wait until the final order is issued for the Section 8 portion of the Crownpoint Uranium Project in paragraph 4. Paragraph 4 further directs the parties to file only one petition for review, "addressing all remaining challenges to decisions rendered by the Presiding Officer," not to exceed thirty pages. All of the estimated six remaining partial initial decisions must therefore be addressed in a single 30-page petition for review.³

ARGUMENT

I. THE COMMISSION DOES NOT HAVE REGULATORY AUTHORITY TO ALTER THE PAGE LIMITS SET FOR A PETITION FOR REVIEW.

Petitions for review in a Subpart L proceeding are governed by the general

² Intervenor's Petition for Review of Presiding Officer's Partial Initial Decision (Waste Disposal Issues) (February 23, 1999); ENDAUM's and SRIC's Petition for Review of Presiding Officer's Partial Initial Decision (Performance-Based Licensing) (March 11, 1999); Intervenor's Petition for Review of Presiding Officer's Partial Initial Decision LBP-99-9 (March 11, 1999); Intervenor's Petition for Review of Presiding Officer's Partial Initial Decision on LPB-99-13, Financial Assurance for Decommissioning (March 30, 1999).

³ On May 13, 1999, the Presiding Officer issued partial initial decision LBP-99-19, which addresses a portion of ENDAUM's and SRIC's radioactive air emissions concern. It defers ruling on their related NEPA concerns until a later date.

procedures in Subpart G, 10 C.F.R. §§ 2.786 and 2.763. See 10 C.F.R. § 2.1253.

Under Subpart G, a petition for review must be limited to ten pages. 10 C.F.R.

2.786(b)(2). Because approximately six partial initial decisions are expected from the Presiding Officer, a party would have a combined sixty pages to petition for review of all those decisions under this rule. The Commission's May 3 Order cuts that page limit in half. This restriction is outside the Commission's authority.

The Subpart G rules of general applicability allow for some exceptions to be made by the Commission. A reduction in page limits, however, is not one of them. 10 C.F.R. § 2.700a provides that the "Commission may provide alternative procedures in adjudications to the extent that there is involved the conduct of military or foreign affairs functions." This exception is not applicable. With respect to time limits, "the time fixed or the period of time prescribed may for good cause be extended or shortened by the Commission or the presiding officer." 10 C.F.R. § 2.711(a).

Because the rules do not allow the Commission to alter page limits in this proceeding, while they do allow the Commission to alter time limits with good cause, it can be presumed that page limits are not within the Commission's discretion to shorten. The rules do not currently provide for such alterations in procedure. The Commission did not act with appropriate authority in reducing the page limit in this case.

II. THE COMMISSION'S REDUCTION OF PAGE LIMITS FOR A PETITION FOR REVIEW VIOLATES INTERVENORS' RIGHT TO A MEANINGFUL OPPORTUNITY FOR HEARING.

The May 3 Order provides no explanation why it reduces the page limits for the parties by half of that provided in the regulations. The practical impact of this restriction is a severe limitation on the Intervenor's ability to participate in a meaningful way in this hearing.

Section 189(a) of the Atomic Energy Act requires the NRC to offer members of the public an opportunity to request a hearing on the issuance of any license for a nuclear facility. 42 U.S.C. § 2239(a)(1)(A). The hearing must offer an opportunity for "*meaningful public participation*". *Union of Concerned Scientists v. NRC*, 735 F.2d 1437, 1446 (D.C.Cir. 1984), *cert. den.*, 469 U.S. 1132, (1985), *quoting Bellotti v. NRC*, 725 F.2d 1380, 1389 (D.C. Cir 1983) (emphasis in original). A meaningful opportunity means having an opportunity to be heard on "all material factors bearing on the licensing decision raised by the [hearing] requestor." *Id.* at 1443. By limiting the parties' pages in a petition for review to thirty pages, the Commission has obstructed the Intervenor's ability to articulate the material issues in a petition for review, let alone describe why the standard for review has been met.

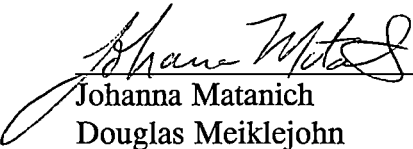
Intervenor's have identified multiple issues within the ten general areas of concern, and their written presentations have been substantial. Intervenor's groundwater presentation, for example, was divided into five volumes, filed with


extensive expert testimony and a 69 page legal brief. In filing their petitions for review on the four partial initial decisions that have already issued, ENDAUM and SRIC used all ten pages, as required by § 2.786(b), to identify issues for review and to explain how they met the standard for review within ten pages. *See, supra* note 2. With approximately five pages to allocate per decision in a petition for review on the Section 8 decisions, it will be nearly impossible to articulate issues for appeal.

The Commission acted unfairly in imposing such a strict limitation, and have infringed Intervenor's rights to a meaningful hearing opportunity. There has been little point to Intervenor's participation in the hearing to date, if their voice will be strangled in a petition for review.

CONCLUSION

For the foregoing reasons, Intervenor ENDAUM and SRIC request that the Commission reconsider its May 3, 1999 Order and vacate its requirement that the parties limit a petition for review on the Section 8 final decisions to thirty pages, allowing the parties to follow the general rules of procedure for such petitions.


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CERTIFICATE OF SERVICE

I hereby certify that:
On May 13, 1999, I caused to be served copies of the following:

**ENDAUM'S AND SRIC'S MOTION FOR RECONSIDERATION OF MAY 3,
1999 ORDER *EXPEDITED REVIEW REQUESTED***

upon the following persons by U.S. mail, first class, and in accordance with the requirements of 10 C.F.R. § 2.712. Service of copies was also made via e-mail to the parties marked below by an asterisk. The envelopes were addressed as follows:

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