

DOCKETED
USNRC

DOCKETED
USNRC

'99 MAR 16 P3:52

'99 MAR 16 03:52

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF REGULATORY
RULEMAKING AND
ADJUDICATIONS STAFF
BEFORE THE COMMISSION

OFFICE OF SECURITY
RULEMAKING AND
ADJUDICATIONS STAFF

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

**INTERVENORS' MOTION FOR LEAVE TO REPLY
TO HRI'S AND STAFF'S RESPONSES TO INTERVENORS'
PETITION FOR REVIEW OF LBP-99-1**

INTRODUCTION

Intervenors Eastern Navajo Diné Against Uranium Mining ("ENDAUM"), Southwest Research and Information Center ("SRIC"), Marilyn Morris and Grace Sam hereby move for leave to reply to Hydro Resources, Inc.'s Opposition to Intervenors' Petition for Review of Presiding Officer's February 3, 1999 Partial Initial Decision Regarding Liquid Waste Disposal Issues (March 2, 1999) ("HRI's Response") and the Nuclear Regulatory Commission Staff's Response to Petition for Review of LBP-99-1 (March 5, 1999) ("Staff's Response"). The opportunity for a reply is needed in order to respond to a new request from HRI to postpone briefing of this matter, and to correct the Staff's material errors in contesting the timeliness of Intervenors' filing.

HRI opposes this motion. Counsel for Intervenors was unable to reach counsel

SECY-EHD-006

20101

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

Document Statistics

Postmark Date 3/9/99 (faxed)

Copies Received _____

Add'l Copies Reproduced 1

Special Distribution _____

RIDS

SIDS dist. of fax cy

for the Staff for its position before filing this motion.

FACTS

LBP-99-1, the Presiding Officer's Partial Initial Decision (Waste Disposal Issues), was served via first class mail on February 3, 1999. On February 23, 1999, Intervenor filed their Petition for Review of that decision. Intervenor's Petition for Review of Presiding Officer's Partial Initial Decision (Waste Disposal Issues) ("Petition for Review"). On March 2, 1999, HRI filed HRI's Response, arguing that the Petition for Review lacks merit. HRI also contends that if review is granted, briefing should be deferred "until the Presiding Officer has issued decisions on each of the issues being addressed in the current hearing and the Commission has decided which of the issues, if any, will be granted review." HRI Response at 3-4. The Staff served its response on March 5, 1999, arguing that the Petition for Review was not timely filed, and review is not warranted. Staff Response at 2-3.

ARGUMENT

The Commission may exercise its discretion under 10 C.F.R. § 2.786(b)(3) to entertain a reply to an opposition to a petition for review. Intervenor submit that as a matter of fairness to the parties, Intervenor should be allowed to respond to HRI's new argument and to correct the Staff's error regarding the timeliness of their Petition for Review.

First, the Intervenor should be given a chance to respond to HRI's request for

deferred briefing, which is made for the first time in its Response. If permitted to reply, the Intervenor will demonstrate that deferred briefing is not only inconsistent with the NRC's regulations at 10 C.F.R. § 2.1253 (requiring the immediate filing of petitions for review following partial initial decisions), but directly contradicts the Commission's directive in this proceeding that the case be decided in manageable portions. *See* CLI-99-1 at 3-4 (January 29, 1999) ("A series of partial decisions, rather than one grand decision at the proceeding's end, would accommodate efficient appellate review by the Commission, if it is sought."). Moreover, the Intervenor will demonstrate that deferred briefing will not achieve the efficiency suggested by HRI. Just as separate written presentations for various issues has facilitated efficient review for the Presiding Officer, so will separate briefing of issues on appeal allow the Commission to review and decide matters on appeal, while the licensing board is completing its initial decisions.

Second, Intervenor should be given the opportunity to correct the Staff's error in challenging the timeliness of the Petition for Review. Contrary to the Staff's argument, the Presiding Officer did not make formal service of LBP-99-1 on the parties by electronic mail.¹ While the Presiding Officer did send an electronic copy of LBP-

¹ Moreover, contrary to the Staff's argument, the Presiding Officer has not adopted electronic service as the rule for every filing in this proceeding. The Presiding Officer has only directed that written presentations and responses be filed electronically, not that all pleadings must be filed electronically. *See* Staff Response at 2 note 3; Memorandum and Order (Scheduling and Partial Grant of Motion for Bifurcation) at 3-4 (September 22, 1998).


99-1 to the parties, his message clearly identified the copy as a "courtesy copy" to the parties, and he did not forward it electronically to the Commission. A copy of the Presiding Officer's electronic message is attached hereto as Exhibit 1. As shown on the certificate of service attached to LBP-99-1, formal service was carried out by first-class mail. Consistent with the regulations, the Intervenor timely filed their Petition for Review on February 23, 1999, which is within 20 days of service of LBP-99-1. See 10 C.F.R. §§ 2.786(b)(1) (allowing 15 days for a response) and 2.710 (allowing an additional five days where service has been effected by first class mail).

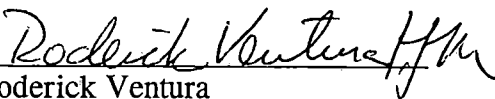
The Commission should exercise its discretion to allow Intervenor to respond to HRI's new argument and to correct the record regarding the timeliness of the Petition for Review. The limited reply will not prejudice any party, and it is necessary to ensure fairness to the Intervenor.

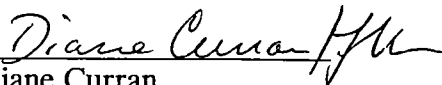
CONCLUSION

For the foregoing reasons, Intervenor respectfully request that the Commission grant their motion to file a reply to HRI's and the Staff's Responses.

Respectfully submitted,


Johanna Matanich
Douglas Meiklejohn
Lila Bird
NEW MEXICO ENVIRONMENTAL
LAW CENTER
1405 Luisa Street, Suite 5
Santa Fe NM 87505
(505) 989-9022


Roderick Ventura
Samuel D. Gollis
P.O. Box 306
Window Rock, AZ 86515
(520)871-5643


Diane Curran
HARMON, CURRAN, SPIELBERG,
& EISENBERG, LLP
2001 "S" Street, Suite 430
Washington DC 20009
(202) 328-3500

DOCKETED
USNRC

'99 MAR 16 P3:52 March 9, 1999

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)	
)	

CERTIFICATE OF SERVICE

I hereby certify that:

On March 9, 1999, I caused to be served copies of the following:

**INTERVENORS' MOTION FOR LEAVE TO REPLY TO HRI'S AND STAFF'S
RESPONSES TO INTERVENORS' PETITION FOR REVIEW OF LBP 99-1**

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

Office of the Secretary
U.S. Nuclear Regulatory Commission*
Washington, D.C. 20555-0001
Attn: Rulemakings and Adjudications
Staff

Shirley Ann Jackson, Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Greta J. Dicus, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Nils J. Diaz, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Edward McGaffigan, Jr.,
Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Jeffrey S. Merrifield, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Peter B. Bloch*
Atomic Safety and Licensing Board
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington D.C. 20555

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Thomas D. Murphy*
Special Assistant
Atomic Safety and Licensing Board
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington DC 20555

Jep Hill, Esq.
Attorney for Hydro Resources, Inc.
Jep Hill & Associates
P.O. Box 2254
Austin, TX 78768

Mitzi Young
John T. Hull
Office of the General Counsel*
Mail Stop - O-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Roderick Ventura
Samuel D. Gollis
DNA - People's Legal Services, Inc.*
PO Box 306
Window Rock, AZ 86515

Diane Curran
HARMON, CURRAN, SPIELBERG &
EISENBERG, LLP*
2001 "S" Street, N.W., Suite 430
Washington DC 20009

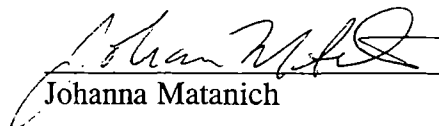
Herb Yazzie, Attorney General
Steven J. Bloxham, Esq.
Navajo Nation Department of Justice
P.O. Drawer 2010
Window Rock, AZ 86515

Anthony J. Thompson
Frederick Phillips
David Lashway
SHAW, PITTMAN, POTTS &
TROWBRIDGE*
2300 "N" Street, N.W.
Washington, D.C. 20037-1128

William Paul Robinson
Chris Shuey
Southwest Research and Information
Center
P.O. Box 4524
Albuquerque, NM 87106

Mitchell Capitan
ENDAUM
P.O. Box 471
Crownpoint, NM 87313


Dated at Santa Fe, New Mexico,
March 9, 1999,


Johanna Matanich

Subject: Liquid Effluent Decision**Date:** Wed, 03 Feb 1999 11:36:29 -0500**From:** Peter Bloch <PBB@nrc.gov>**To:** nmenvlaw@aol.com, HN1406@handsnet.org, JTH@nrcsmtp.nrc.gov, MAY@nrcsmtp.nrc.gov,
anthony_thompson@shawpittman.com, david_lashway@shawpittman.com,
frederick_phillips@shawpittman.com, DCurran.HCSE@zzapp.org**CC:** JSH@nrcsmtp.nrc.gov, SFG@nrcsmtp.nrc.gov, TDM@nrcsmtp.nrc.gov

This is a courtesy copy. It will be delivered to the Secretary of the Commission this afternoon.

Peter Bloch
Presiding Officer

 liquidwa.wpd	Name: liquidwa.wpd Type: WordPerfect Document (application/wordperfect5.1) Encoding: base64 Description: WordPerfect 6.1
--	---

