

DOCKETED  
April 1, 1999

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'99 APR -6 P3:44

BEFORE THE COMMISSION

OFFICE OF SECRETARY  
RULEMAKING AND  
ADJUDICATION 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

**ENDAUM'S AND SRIC'S MOTION TO STRIKE  
HRI'S RESPONSE TO ENDAUM'S AND SRIC'S  
PETITION FOR REVIEW OF PBL-99-9**

**INTRODUCTION**

Intervenors Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC") hereby move the Commission to strike Hydro Resources, Inc.'s Response to ENDAUM's and SRIC's Petition for Review of LBP-99-9.<sup>1</sup> This motion is made pursuant to 10 C.F.R. §§2.730 and 2.786(b)(3) on the grounds that HRI's Response was filed late and should be stricken.

Counsel for ENDAUM and SRIC has contacted counsel for HRI, the Staff, and Intervenors Marilyn Morris and Grace Sam to determine the positions of those parties on this motion. At the time of filing this motion, counsel for ENDAUM and SRIC had not heard back from counsel for HRI. Counsel for Ms. Morris and Ms. Sam have indicated that they support the motion; counsel for the Staff has indicated that the Staff takes no position on this motion.

<sup>1</sup> Hydro Resources, Inc.'s March 29, 1999 Opposition to Intervenors' Petition for Review of LBP-99-9 ("HRI's Response").

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

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## **FACTUAL BACKGROUND**

ENDAUM and SRIC filed a Petition for Review of LBP-99-9 with the Commission on March 11, 1999. The Petition was filed and served on counsel for HRI by electronic mail and by first class mail. The Staff responded to ENDAUM's and SRIC's petition on March 22, 1999, serving its response by overnight mail on that date. HRI did not respond to the petition until March 29, 1999, and served its Response by overnight mail on that date.

## **ARGUMENT**

Section 2.786(b)(3) of 10 C.F.R. provides that a party to a proceeding may file an answer to a petition for review, and that the answer must be filed within ten days after the filing of the petition. In addition, 10 C.F.R. §2.710 provides that if a party must act within a specified time after service of a document by mail, five days shall be added to the time allotted.

ENDAUM's and SRIC's Petition for Review of LBP-99-9 was filed with the Commission on March 11, 1999. As is indicated by the certificate of service of ENDAUM's and SRIC's Petition, it was served on March 11, 1999 by first class mail. In accordance with 10 C.F.R. §§ 2.710 and 2.786(b)(3), the Staff and HRI each had a total of 15 days in which to answer the Petition. The 15th day was March 26, 1999. As is indicated by the certificate of service on HRI's Response, it was not filed until March 29, 1999, three days after the deadline.

The Commission has ruled that parties are to be held to basic procedural rules, "especially ones as simple to understand as those establishing filing deadlines."

Yankee Atomic Electric Company (Yankee Nuclear Power Station), 48 N.R.C. 185, 202 (1998). In Yankee Atomic, the Commission dismissed an appeal filed by the Franklin Regional Planning Board because the appeal was filed late. The Commission did so even though the Board was not represented by counsel, and therefore would not be expected to meet the same standards expected of parties with counsel. The Commission pointed out:

While missing a deadline for appeal is not necessarily a jurisdictional bar to further action on an appeal, we historically have excused a failure to meet appeal deadlines only in "extraordinary and unanticipated circumstances."

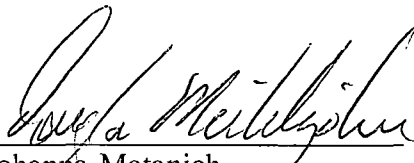
48 N.R.C. 202, citations omitted.

There are no "extraordinary or unanticipated circumstances" present here that justify HRI's late filing. The deadline for HRI's Response was a filing deadline like that in Yankee Atomic. Moreover, unlike the Franklin Regional Planning Board, HRI is not acting *pro se*, but is represented by experienced counsel. Despite that representation, however, HRI neither requested an extension of time in which to file nor provided any explanation for the delay in the filing of its Response.

#### **CONCLUSION**

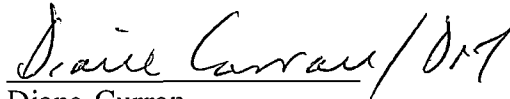
For these reasons, the Commission should strike HRI's Response from the record.

Dated: April 1, 1999.



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**CERTIFICATE OF SERVICE**

I hereby certify that on April 1, 1999 I caused to be served copies of:

**ENDAUM'S AND SRIC'S MOTION TO STRIKE HRI'S RESPONSE  
TO ENDAUM'S AND SRIC'S PETITION FOR REVIEW OF LBP-99-9**

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 to the parties marked below with a + and by electronic mail to the parties marked below by an asterisk. The envelopes for first class mail service were addressed as follows:

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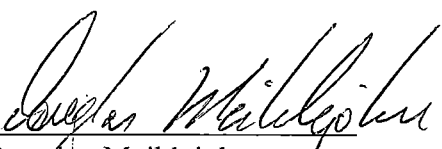
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