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

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

Before Administrative Judges:
Peter B. Bloch, Presiding Officer
Thomas D. Murphy, Special Assistant

In the Matter of)

) Docket No. 40-8968-ML

HYDRO RESOURCES, INC.)

2929 Coors Road, Suite 101)
Albuquerque, New Mexico 87120)

) ASLBP No. 95-706-01-ML
)
)

**GRACE SAM AND MARILYN MORRIS'S MOTION FOR LEAVE TO REPLY TO THE
RESPONSES FILED BY HRI AND NRC STAFF**

Intervenors Grace Sam and Marilyn Morris hereby move the Presiding Officer for leave to reply to presentations filed on March 25 and 29, 1999 by Hydro Resources, Inc. (HRI) in response to the Final Written Presentation of Grace Sam and Marilyn Morris; and presentations filed by the NRC staff on April 1, 1999 also in response to the Final Written Presentation of Grace Sam and Marilyn Morris. The Final Written Presentation of Grace Sam and Marilyn Morris was filed on February 19, 1999 (Sams' final written presentation). On March 29, 1999, HRI filed Hydro Resources, Inc's Response to the Final Written Presentation of Grace Sam and Marilyn Morris (HRI March 29 response) which directly referenced earlier HRI presentations filed on March 25, 1999 (HRI March 25 responses) submitted in response to written

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presentations filed by ENDAUM and SRIC. The NRC staff filed a number of written presentations on April 1, 1999, including: NRC Staff's Response to Intervenors' Presentations on Environmental Justice Issues (hereinafter NRC's Environmental Justice Response), and NRC Staff's Response to Intervenors Presentations on NEPA Issues (Purpose, Need, Cost/Benefit, Alternatives, and Supplementation) (hereinafter NRC's NEPA response). Marilyn Morris and Grace Sam seek leave to reply to these above mentioned presentations by HRI and the NRC staff.

The NRC's Subpart L regulations provide that after a party has filed its initial presentation, leave must be obtained to file any further presentations, subject to the discretion of the Presiding Officer. 10 C.F.R. § 2.1233(d). The Presiding Officer has already acknowledged the need in this proceeding for a "full and true disclosure of the facts." Memorandum and Order (Motions to Reply and Rebut), March 24, 1999 at 2 (granting ENDAUM and SRIC's motion to reply to groundwater issues). Grace Sam and Marilyn Morris should be granted leave to reply to the HRI and NRC responses in order to address new facts and information provided for the first time in these responses, and thus provide a full and true disclosure of the facts. In addition, Grace Sam and Marilyn Morris should be allowed to reply to misstatements of law by HRI and the NRC staff, and to respond to NRC staff's interpretation of relevant case law and NRC staff's views regarding the scope of these proceedings. Allowing a reply by Grace Sam and Marilyn Morris on these matters would also establish a complete and accurate record regarding the NEPA and environmental justice issues. Further elucidation of the issues addressed in the responses will be helpful to the Presiding Officer in reaching an appropriate determination in this matter.

ARGUMENT

Marilyn Morris and Grace Sam seek to reply to new factual statements asserted by HRI and the NRC staff in their responses to the Sams' final written presentation. Since such facts have not been referenced anywhere in the record and were not available to the Sams prior to the filing of these responses, Marilyn Morris and Grace Sam should be given the opportunity to address these new facts and make the record complete in regards to them.

For example, in its March 29 response, HRI states for the first time in this proceeding that it will "not be transporting uranium slurry, 11e(2) by-product material, or yellowcake to and from the sites at night." HRI March 29 response at 2. HRI seemingly relies on this statement to respond to the Sams' assertion that the FEIS fails to adequately weigh transportation risks. See Sams' final written presentation at 7-10. Despite the fact that this statement by HRI is neither supported by citation to the record, the FEIS, or any other evidentiary foundation whatsoever, this statement is further relied upon by the NRC staff in its response to the environmental justice issues raised by the Sams. NRC's Environmental Justice Response at 14, note 18. Whether such alleged facts were adequately discussed in the FEIS is at the heart of the Sam's FEIS and NEPA arguments. Because this new assertion arises in HRI's response and is relied upon by both HRI and the NRC staff in regards to the transportation risks discussion, the Sams should be allowed to briefly reply to this factual statement in order to ensure a complete record on this topic.

Similarly, NRC's NEPA response presents new assertions on exactly how the NRC staff chose its recommended alternative through comparison of the information in the FEIS. NRC's NEPA response at 9; Affidavit of Robert D. Carlson at 2-3. The NRC's NEPA response includes

an affidavit by Robert D. Carlson, a project manager of NRC, who presents testimony on the basis for the Staff's findings in the FEIS. See affidavit of Robert D. Carlson at 2. Whether there is a comparison of the alternatives listed in the FEIS is a key part of the Sams' arguments of inadequacy in the FEIS. See Sams' final written presentation at 16-20 and 23-24. Because Mr. Carlson's factual assertions were unavailable prior to the submission of his affidavit, the Sams were unable to comment on them. The Sams should be allowed to briefly reply to these factual assertions to make the record complete as to their significance in the NEPA context.

Furthermore, Marilyn Morris and Grace Sam should be allowed to address the relevancy of this affidavit, especially in terms of information it brings out that was not mentioned in the FEIS.

Marilyn Morris and Grace Sam should be allowed to briefly reply to misstatements of law that were raised by the HRI and NRC in their responses. A reply by the Sams would not only ensure that the record would be complete in regards to these issues, but a reply could assist the Presiding Officer by elucidating these legal issues so that a proper decision could be made. For example, in HRI's March 25 response, HRI asserts that the Navajo Preference in Employment Act is irrelevant to HRI's private venture. While the plain reading of the Navajo Preference in Employment Act refutes this assertion, the Sams would be able to elaborate on this Navajo law in a reply and place it in proper context.

Finally, Marilyn Morris and Grace Sam should be given an opportunity to reply in order to respond to NRC's interpretation of relevant case law and NRC staff's views regarding the scope of these proceedings. In the NRC's Environmental Justice response, rather than addressing some of the substantive issues presented in the Sams' final written presentation, the NRC staff chooses to dismiss much of the Sams' argument as either a misreading of relevant

case law (see NRC's Environmental Justice response at 12, dismissing Grace Sam and Marilyn Morris's analysis of *Louisiana Energy Services* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77 (1998)) or as "outside the scope of this phase of the proceeding" (see NRC's Environmental Justice response at 11, discussing Sams' discussion of relocation of Crownpoint drinking water wells). These allegations by the Staff are clearly wrong. For example, regarding the latter issue, the Presiding Officer has ordered that intervenors may submit written presentations with respect to any issue that challenges the validity of the license, or in other words, "that may demonstrate that the license at issue in this case was improperly granted." Memorandum and Order (Pending Procedural Matters), November 10, 1998 at 2, (clarifying earlier September 22 Order and specifically allowing presentation of cumulative impacts issue). Non-compliance with Environmental Justice mandates and NEPA would clearly invalidate the license and are therefore allowed to be presented in "this phase of the proceeding." This would include consideration of NTUA and local community views regarding the movement of drinking wells as described in the FEIS. Because the NRC staff relies so heavily on technical assertions that Grace Sam and Marilyn Morris are mistaken in their views of the case law and the scope of these proceedings, intervenors should be given an opportunity to respond and shine light on these procedural and legal issues.

CONCLUSION

For the foregoing reasons, Marilyn Morris and Grace Sam should be allowed to reply to the responses by HRI and the NRC staff. An opportunity to respond would be fair to Marilyn Morris and Grace Sam and would result in a complete and accurate record. To the extent that the Sams would be responding to new factual assertions, a reply would ensure a full and true

disclosure of the facts. Such a reply may also elucidate certain facts and legal issues, assisting the Presiding Officer in making a proper decision in this matter.

Dated April 8, 1999

Respectfully submitted



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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 April 8, 1999, I caused to be served copies of the following:

GRACE SAM AND MARILYN MORRIS' MOTION FOR LEAVE TO REPLY TO THE
RESPONSES FILED BY HRI AND NRC STAFF

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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Dated this 8th day of April, 1999



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