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

OFFICE OF SECRETARY
FOR ENVIRONMENTAL
AD

Before Administrative Judge Peter B. Bloch

_____)	
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 TO STRIKE
HRI'S RESPONSES TO INTERVENORS' PRESENTATIONS ON
ENVIRONMENTAL JUSTICE AND NEPA ISSUES**

INTRODUCTION

Intervenors Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC") hereby move to strike Hydro Resources, Inc.'s Response to Intervenors' Brief Regarding Environmental Justice (March 25, 1999) and to strike Hydro Resources, Inc.'s Response to ENDAUM and SRIC's Brief with Respect to NEPA issues Concerning Project Purpose and Need, Cost/Benefit Analysis, Action Alternatives, No Action Alternative, Necessity to Supplement EIS, Mitigation and Cumulative Impacts (March 25, 1999), (hereinafter collectively referred to as "HRI's responses"). Intervenors move to strike HRI's responses because HRI served them well past the filing deadline, in violation of the Presiding Officer's Memorandum and Order (Scheduling and Partial Grant of Motion

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for Bifurcation) (September 22, 1998) ("September 22 Order").

FACTUAL BACKGROUND

Intervenors filed three presentations on Friday, February 19, 1999: environmental justice; cumulative impacts; and other NEPA issues. ENDAUM's and SRIC's Brief in Opposition to Hydro Resources, Inc.'s Application for a Materials License with Respect to: Environmental Justice Issues (February 19, 1999); ENDAUM's and SRIC'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); 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) (hereinafter collectively referred to as "Intervenors' Presentations"). Intervenors' Presentations were served via electronic mail and federal express. Id. Federal Express delivered copies of the presentations to counsel for HRI on Monday, February 22, 1999. A copy of the federal express receipt is attached hereto as Exhibit 1. HRI did not file its responses to these presentations until March 25, 1999.

ARGUMENT

I. HRI'S RESPONSES ARE UNTIMELY AND SHOULD BE STRICKEN FROM THE RECORD.

The Presiding Officer directed that presentations and responses in this proceeding be served via electronic mail, and received by the service list within two days following the date of filing. September 22 Order at 3-4. The September 22 Order specifically instructs HRI to "respond to written presentations within 30 days from when they actually receive the presentation." *Id.* at 4. Accordingly, when Intervenors' filing deadline was February 16, 1999, HRI calculated its response deadline for Intervenors' Presentations to be March 18, 1999, and this schedule was affirmed by the Presiding Officer. Memorandum and Order (Procedural Issues) at 2 (February 4, 1999). Subsequently, Intervenors received a three-day extension from the Commission, which extended their filing deadline until February 19, 1999. CLI-99-03, at 2, 47 NRC ____ (February 11, 1999). Applying this extension to HRI, as a matter of fairness, their deadline would have been extended to March 22, 1999. HRI's responses, which were filed on March 25, 1999, are, therefore, three days late.

Even if the Presiding Officer's February 22, 1999, ruling, with respect to deadlines for motions for leave to file replies, could be broadly construed to apply to written presentation responses, HRI's filing is still, inexplicably, late. On February 22, 1999, the Presiding Officer conducted a telephone conference between the parties to resolve the Intervenors' deadline for filing a motion for the right to rely. *See*

Electronic Order (Notes of Procedural Conference Held by Telephone) (February 22, 1999). In his notes from the conference, the Presiding Officer states,

In the future, deadlines shall be computed from the first date on which the entire document is in the hands of a party. Thus, if electronic service is effected on day 1 and attachments are received by overnight mail on day 2, then filing deadlines shall be computed from day 2.

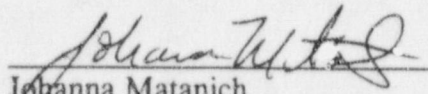
First, this ruling does not apply to extend HRI's deadline, because it was not made in the context of deadlines for presentations and responses. Those two types of filings were fully addressed in the September 22 Order, which required HRI to file its responses within thirty days. September 22 Order at 3-4. Second, even if the ruling does apply, HRI was still late. HRI received Intervenors' Presentations via federal express on February 22, 1999. Calculating a deadline thirty days from that date, HRI's due date would have been February 24, 1999. HRI did not file until the evening of February 25, 1999.

HRI did not file a motion for an extension of its filing date, nor did it seek to explain the delay in either its response or its e-mail communication serving the filing. Counsel for ENDAUM and SRIC, Johanna Matanich, left a voice mail message inquiring about the missing filing for HRI counsel, Frederick Phillips, on the afternoon of February 25, 1999, but that call has not been returned. By filing late, HRI has demonstrated its disregard for the Presiding Officer's filing instructions, for this proceeding in general, and for the other parties, which is intolerable.

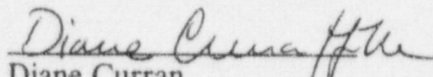
CONCLUSION

Because HRI's responses to Intervenors' three February presentations failed to comply with applicable service requirements, Intervenors respectfully request that the Presiding Officer strike them from the official record of the proceeding, return HRI's responses, and not entertain HRI's responses.

Respectfully submitted,



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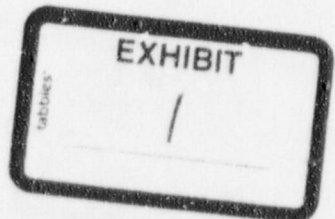
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

Before Administrative Judge Peter B. Bloch, Presiding Officer

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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 March 29, 1999, I caused to be served copies of the following:

ENDAUM'S AND SRIC'S MOTION TO STRIKE HR'S RESPONSES TO INTERVENORS' PRESENTATIONS ON ENVIRONMENTAL JUSTICE AND NEPA ISSUES

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

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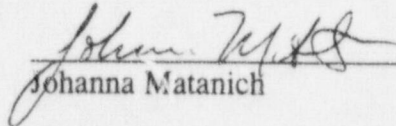
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Dated at Santa Fe, New Mexico,
March 29, 1999,



Johanna Matanich