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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE COMMISSION

'00 FEB 17 P3:15

OFFICE OF SECRETARY
REGULATORY AND
ADJUDICATION STAFF

In the Matter of:)
)
)
HYDRO RESOURCES, INC.)
P.O. Box 15910)
Rio Rancho, New Mexico 87174)
_____)

Docket No. 40-8968-ML

**HYDRO RESOURCES, INC.'S OBJECTION TO ATTEMPT TO SUPPLEMENT
THE RECORD**

I. INTRODUCTION

Hydro Resources, Inc. ("HRI"), respectfully objects to the attempt by John D. Fogarty, M.D., to supplement the record in the above-captioned proceeding by his January 28, 2000, letter submittal to the Commission stating his opinions regarding the groundwater restoration standard adopted by the Nuclear Regulatory Commission ("NRC") for the Crownpoint Uranium Project ("CUP") and requesting that the license issued to HRI be suspended.¹ Dr. Fogarty is a family practice physician unqualified to render opinions on the safety of the groundwater restoration standard adopted by the NRC. In addition, Dr. Fogarty's submittal is an attempt to reopen a closed record without satisfying the requirements of 10 C.F.R. § 2.734. Accordingly, Dr. Fogarty's January 28, 2000, letter should not be made a part of the record of this proceeding.

¹ The letter submittal objected to herein was served on the parties by the Office of the Secretary of the Commission on February 9, 2000.

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II. DISCUSSION

A. Dr. Fogarty Is Not Qualified To Render Opinions On The Safety Of The Groundwater Protection Standard.

Dr. Fogarty explains that he is qualified to offer an opinion on the adequacy of the groundwater restoration standard adopted by the NRC because he has been a medical doctor since 1993 and he has “taken several classes in epidemiology and environmental health.” Fogarty letter at 2. The qualifications of an expert must be established by showing relevant experience or academic training or some combination of the two. Academic training that bears no particular relationship to the professed area of expertise is insufficient to support qualification as an expert. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-78-36, 8 NRC 567, 570-71 (1978). Doctor Fogarty points to no experience or coursework in radiation physics or radiation health effects that might support his claimed qualification to critique the groundwater restoration standard. Consequently, Dr. Fogarty is not qualified to offer his opinions regarding the sufficiency of that standard.

B. Dr. Fogarty’s Submittal Improperly Seeks To Reopen A Closed Record.

To reopen a closed record, a movant must satisfy the criteria set forth at 10 C.F.R. § 2.734. This section requires, *inter alia*, that the party wishing to reopen the record file a motion addressing “a significant safety or environmental issue. The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.” The motion must be supported by “one or more affidavits which set forth the factual and/or technical bases for the movant’s claim” that the aforementioned criteria have been satisfied. 10 C.F.R. § 2.734 (a)-(b).

Dr. Fogarty has filed no motion and has made no attempt to satisfy the cited criteria. Thus, Dr. Fogarty's submittal cannot reopen the closed record of the HRI license proceeding.

C. Dr. Fogarty Is Not A Party To This Proceeding And Has Made No Attempt To Become A Party.

Dr. Fogarty has never sought to intervene in this proceeding pursuant to 10 C.F.R. § 2.714 and has not filed a petition for a hearing pursuant to 10 C.F.R. § 2.1205. Moreover, Dr. Fogarty's attempt now to begin participating in this proceeding and to request relief is untimely pursuant to 10 C.F.R. § 1205(d), as this hearing was commenced in response to a notice of the opportunity to request a hearing published in the Federal Register on November 14, 1994 (59 Fed. Reg. 56557).²

² Moreover, Dr. Fogarty's letter should not be construed to be a permissible "limited appearance" under 10 C.F.R. § 2.715, as the matter no longer is before the Presiding Officer (§ 2.715(a)) and Dr. Fogarty makes no attempt to comply with § 2.715(d), and is untimely thereunder in any event.

III. CONCLUSION

For the reasons set forth above, HRI respectfully requests that the Commission decline to reopen the record in this proceeding and that Dr. Fogarty's submittal dated January 28, 2000, be rejected.

Respectfully submitted this 15th day of February, 2000.

SHAW PITTMAN



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Docket No. 40-8968-ML
ASLBP No. 95-706-01-ML

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document in the above-captioned proceeding has been served on the following by electronic mail (as indicated) and on all parties by first class mail, postage pre-paid, on this 15th day of February, 2000.

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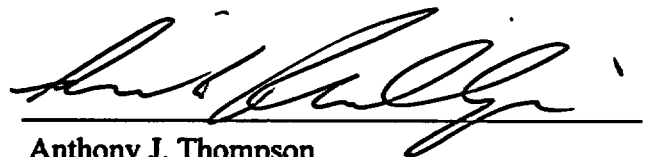
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