

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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DOCKETED 6/23/00

BEFORE THE COMMISSION

In the Matter of

HYDRO RESOURCES, INC.
P.O. Box 15910
Rio Rancho, New Mexico 87174

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Docket No. 40-8968-ML

NRC STAFF'S RESPONSE TO PETITION FOR PARTIAL RECONSIDERATION

John T. Hull
Counsel for NRC Staff

June 22, 2000

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INTRODUCTION

On June 5, 2000, Intervenors Eastern Navajo Dine Against Uranium Mining (ENDAUM) and Southwest Research and Information Center (SRIC) filed "Intervenors' Motion for Partial Reconsideration of CLI-00-08" (Petition for Reconsideration). The June 5 petition pertains to a Commission decision issued on May 25, 2000 in this proceeding. See CLI-00-08, "Memorandum and Order," 51 NRC ___, slip op. (May 25 Order). ENDAUM and SRIC are requesting the Commission to reconsider its May 25 Order insofar as it declined to revoke the 1998 *in situ leach* (ISL) materials license issued to Hydro Resources, Inc. (HRI). See May 25 Order, at 15-16.

As discussed below, the Intervenors have failed to establish that the Commission committed any legal error in deciding not to revoke HRI's license. Accordingly, the Commission should deny the Petition for Reconsideration.

BACKGROUND

In agreement with the Intervenors' earlier arguments, the Commission concluded that Criterion 9 of 10 C.F.R. Part 40, Appendix A, is best read as requiring an ISL license applicant to submit a financial assurance plan, including decommissioning cost estimates,

to the Staff for its review and approval before an ISL license is issued. See May 25 Order, at 11-13. The Commission found that construing Criterion 9 in this way best ensures that a meaningful hearing opportunity is provided to contest the adequacy of HRI's financial assurance plan, and final estimates regarding decommissioning and restoration costs at HRI's mining sites. *Id.*, at 13-14. However, the actual surety arrangement required by Criterion 9 need not be in place until HRI is ready to begin its ISL operations. *Id.*, at 13 n.15. See also HRI License Condition 9.5.

The Commission declined to revoke HRI's license, choosing instead to impose an additional license condition stating as follows:

[T]he company is prohibited from using its license until the NRC staff has approved its decontamination, decommissioning and reclamation plan, including the requisite financial assurance plan and cost estimate.

May 25 Order, at 15-16. The Commission determined that this condition protects the Intervenor's hearing rights, since it places the Intervenor in the same position they would have been in "if the staff had approved the financial assurance plan, including cost estimates, prior to issuing the license." *Id.*, at 16 (footnote omitted). Once HRI submits the requisite financial information to the Presiding Officer, the Intervenor is provided the opportunity to challenge the adequacy of the information in a written presentation, pursuant to 10 C.F.R. § 2.1233. See May 25 Order, at 16. Thus, the Commission found that this opportunity to demonstrate whether HRI's financial assurance submission is defective fully protects the Intervenor's hearing rights. *Id.*, at 15 n.18.

DISCUSSION

In order to successfully petition for reconsideration of the May 25 Order, ENDAUM and SRIC must show that some aspect of that Order was erroneous. See 10 C.F.R.

§§ 2.1259(b) and 2.771(b). *See also Babcock and Wilcox* (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-35, 36 NRC 355, 357 (1992).

ENDAUM and SRIC fail to show that the Commission committed any error in refusing to revoke HRI's license, or that the May 25 Order amounts to an abuse of the Commission's discretion. The remedy chosen by the Commission -- made necessary by the Staff's failure to properly interpret Criterion 9's requirements in issuing a license to HRI -- protects the Intervenors' right to challenge HRI's financial information before the license becomes effective.

Moreover, ENDAUM and SRIC do not identify any harm to their interests caused by the May 25 Order. Their argument that the Commission refused "to honor the Intervenors' right to obtain the denial of HRI's license through the adjudicatory process" (Petition for Reconsideration, at 6) finds no support in the terms of the May 25 Order. Once HRI submits the requisite financial assurance plan, which will include its cost estimates for decommissioning and restoring its ISL mining sites, the Intervenors will have the opportunity to contest the adequacy of this information in a hearing before the Presiding Officer. *See* May 25 Order, at 13-16. If the Intervenors demonstrate that HRI's financial information does not meet NRC requirements, the license may be revoked. No showing is made that the hearing opportunity provided by the May 25 Order fails to adequately protect the Intervenors' procedural rights or other interests.

Additionally, the Commission has not yet completed its review process with respect to the other pending technical issues, and it thus remains to be determined whether the Commission will find that HRI's license contains any defects warranting revocation. *See* May 25 Order, at 2 n.4, 15 n.18, and 20.

Similarly unsupported and unpersuasive is the Intervenor's assertion that the Commission should have adhered to its "routine practice" by denying, without prejudice, HRI's license application, and should have accordingly revoked HRI's license. Petition for Reconsideration, at 7. ENDAUM and SRIC do not explain how this action would protect their interests in a way which the May 25 Order does not. Since the May 25 Order effectively suspends the license until the requisite financial information has been submitted and approved, the status quo is maintained with no adverse impact on the Intervenor's rights.

CONCLUSION

For the reasons discussed above, ENDAUM and SRIC have not shown a basis for revoking HRI's license. Accordingly, the Staff requests the Commission to deny the Petition for Reconsideration.

Respectfully submitted,

John T. Hull */RA/*
Counsel for NRC Staff

Dated at Rockville, Maryland
this 22 day of June 2000

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CERTIFICATE OF SERVICE

I hereby certify that signed copies of "NRC STAFF'S RESPONSE TO PETITION FOR PARTIAL RECONSIDERATION" have been served on the external recipients listed below (marked by single asterisks) by U.S. Mail, first class, this 22nd day of June 2000. Electronic copies have been transmitted this date to the Office of the Secretary, and to other internal recipients listed below and marked by double asterisks. Those external recipients marked by single asterisks and a plus sign (+) were also served by electronic mail on this date.

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