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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

BEFORE THE COMMISSION

'00 JUN 27 P3:36

In the Matter of:

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

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

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

**OPPOSITION OF HYDRO RESOURCES, INC.
TO INTERVENORS EASTERN NAVAJO DINE AGAINST
URANIUM MINING'S AND SOUTHWEST RESEARCH AND INFORMATION
CENTER'S MOTION FOR PARTIAL RECONSIDERATION OF CLI-00-08**

Hydro Resources, Inc. ("HRI") respectfully opposes Eastern Navajo Dine Against Uranium Mining's ("ENDAUM") and Southwest Research and Information Center's ("SRIC") (hereinafter, jointly, "Intervenors") Motion (the "Motion") for Partial Reconsideration of CLI-00-08, the Commission's Memorandum and Order of May 25, 2000 (the "Order"). The Order concludes that HRI has not yet submitted for NRC Staff review a final financial assurance plan and remands the issue of financial assurance to the Presiding Officer for further proceedings. The Order further establishes a schedule for HRI to submit its final financial assurance plan and for Intervenors to submit a written presentation alleging deficiencies in that plan.

In affirming the validity of HRI's license while imposing an additional license condition safeguarding public health and safety and ensuring Intervenors' hearing rights, the Order strikes a sensible balance of the public interest, the parties' interests, and procedural efficiency. Intervenors' Motion offers no compelling reason to reconsider the Commission's manifestly reasonable exercise of its equitable discretion.

Template = SECY-021

SECY-02

Background

HRI obtained a source material license for a proposed *in situ* leach uranium mining operation (SUA-1508) in January 1998. ENDAUM and SRIC subsequently were allowed to intervene to challenge that license and since that time have filed approximately 12,000 pages of argument with the Presiding Officer, this tribunal, and the United States Court of Appeals for the District of Columbia Circuit. One of the many arguments raised by Intervenors in the course of this proceeding was that the financial information and cost estimates submitted by HRI in support of its license application were inadequate to satisfy the Criterion 9 financial assurance plan requirement. NRC Staff determined that HRI had submitted sufficient information to issue a license, but continued to request and receive supplemental information after issuance. The Presiding Officer rejected Intervenors' challenge to the sufficiency of HRI's submittals (LBP-99-13).

In CLI-00-08, the Commission determined that "the most reasonable interpretation of Criterion 9 is that an applicant must submit the plan for the NRC staff's review prior to the license's issuance. CLI-00-08, *slip op.* at 13. The Commission stated that this interpretation was "sound regulatory policy" and "ensures a meaningful hearing opportunity on all substantive issues material to the agency's licensing decision." *Id.* The Commission, exercising its "equitable discretion to fashion sensible remedies," declined to invalidate HRI's license and force repetition of the entire licensing process. *Id.*, *slip op.* at 15. Rather, the Commission decided to impose an additional license condition on HRI's license, prohibiting HRI from using its license until NRC Staff approves the required financial assurance plan. The Commission's Order expressly provides that Intervenors will have thirty days after HRI serves its plan in which to file objections thereto. *Id.* *slip op.* at 15-16.

Argument

As Intervenors have themselves pointed out (*Motion* at 3), "(A) movant seeking reconsideration 'must do so on the basis of an elaboration upon, or refinement of, arguments

previously advanced, generally on the basis of information not previously available.” Id. at 3, citing Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-35, 36 NRC 355 (1992) (other citations omitted in original). Intervenors do not elaborate on or refine their previously advanced arguments, nor do they rely on information not previously available. Rather, Intervenors argue that the Commission “lacked ‘equitable discretion’ (citation omitted) to fashion an alternative remedy which allowed HRI to retain the license.” Motion at 3-4. In support of this proposition Intervenors cite the Notice of Proposed Rulemaking (“NPRM”) at 52 Fed. Reg. 20,089.

Intervenors cite the NPRM as embodying the Commission’s recognition of “the public’s right to seek a decision denying the issuance of a license.” Motion at 4 (citation omitted).

Intervenors interpret the cited rulemaking as follows:

Thus, the “balance” struck in the rulemaking gave a license applicant the benefit of obtaining a license based on staff approval only, without awaiting the outcome of a hearing; while on the other hand, it maintained the full right of interested members of the public to challenge the validity of the license in an adjudicatory hearing. (footnote omitted). Under this balance, it was understood that the early issuance of the license was not necessarily permanent, but subject to the outcome of the hearing which might result in reversal of the Staff’s licensing decision.

The Commission’s decision in CLI-00-08 upends this balance by refusing to honor the Intervenors’ right to obtain the denial of HRI’s license through the adjudicatory process.

Motion at 5-6.

Intervenors’ citation to the NPRM does not support their conclusion that the Commission is without equitable discretion to fashion a sensible remedy. However, even assuming, arguendo, that Intervenors’ reading of the NPRM is consistent with the Commission’s intentions, they still proffer no basis for the Commission to reconsider any of its decision in CLI-00-08. Consistent with NRC regulations (and with Intervenors’ argument, as set forth above), NRC Staff issued HRI a license and Intervenors have taken (and continue to take) full advantage of the adjudicatory process in their effort to have that license revoked.

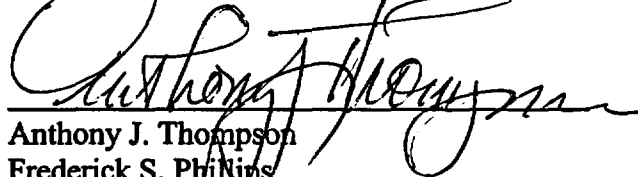
The Commission, in CLI-00-08, has determined that HRI's license application was deficient for failing to satisfy completely the financial assurance requirements and has required HRI to submit specified additional information. The Commission's Order expressly provides that Intervenor shall then have thirty days in which to make their own written submittal challenging HRI's supplemental information. In the interim, the Commission's Order imposes a new condition on HRI's license prohibiting HRI from using the license until the required financial assurance submittal has been approved. CLI-00-08 at 15-16. Thus, the Commission's sensible remedy protects public health and safety, ensures Intervenor's hearing rights, and stops short of requiring this lengthy proceeding to start all over again.

Conclusion

Intervenor's Motion shows no prejudice to Intervenor by the Commission's decision in CLI-00-08 and fails to justify the Commission's reconsideration of that Order. Consequently, and for all the reasons set forth above, HRI respectfully requests that Intervenor's Motion for Partial Reconsideration be denied.

Respectfully submitted this 20th day of June, 2000.

SHAW PITTMAN



Anthony J. Thompson
Frederick S. Phillips
David C. Lashway
2300 N Street, N.W.
Washington, D.C. 20037-1128
Tel.: (202) 663-8000
Fax: (202) 663-8007

ON BEHALF OF HYDRO RESOURCES, INC.

P.O. Box 15910
Rio Rancho, New Mexico 87174

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document, OPPOSITION OF HYDRO RESOURCES, INC. TO INTERVENORS EASTERN NAVAJO DINE AGAINST URANIUM MINING'S AND SOUTHWEST RESEARCH AND INFORMATION CENTER'S MOTION FOR PARTIAL RECONSIDERATION OF COMMISSION ORDER CLI-00-08 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 20th day of June, 2000.

Administrative Judge
Thomas S. Moore, Presiding Officer
Atomic Safety and Licensing Board
One White Flint North
11555 Rockville Pike
U.S. Nuclear Regulatory Commission
Rockville, Maryland 20852
BY FIRST CLASS MAIL AND EMAIL

Adjudicatory File
Atomic Safety and Licensing Board
One White Flint North
11555 Rockville Pike
U.S. Nuclear Regulatory Commission
Rockville, Maryland 20852
BY FIRST CLASS MAIL AND EMAIL

Office of the Secretary
Attn: Rulemakings and Adjudications Staff
One White Flint North
11555 Rockville Pike
U.S. Nuclear Regulatory Commission
Rockville, Maryland 20852
BY FIRST CLASS MAIL AND EMAIL

Office of Commission Appellate
Adjudication
One White Flint North
11555 Rockville Pike
U.S. Nuclear Regulatory Commission
Rockville, Maryland 20852
BY FIRST CLASS MAIL

Administrative Judge Thomas D. Murphy
Special Assistant
Atomic Safety and Licensing Board
11545 Rockville Pike
U.S. Nuclear Regulatory Commission
Rockville, Maryland 20852
BY FIRST CLASS MAIL AND EMAIL

Atomic Safety and Licensing Board Panel
One White Flint North
11555 Rockville Pike
U.S. Nuclear Regulatory Commission
Rockville, Maryland 20852
BY FIRST CLASS MAIL

Jep Hill, Esq.
Jep Hill and Associates
816 Congress Avenue, Suite 1100
Austin, Texas 78701
BY FIRST CLASS MAIL

Mitzi Young
John Hull
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
BY FIRST CLASS MAIL AND EMAIL

Mr. Mark Pelizza
Vice President
URI, Inc.
12750 Merit Drive, Suite 720, LB12
Dallas, TX 75251
BY FIRST CLASS MAIL AND EMAIL

Mitchell W. Capitan, President
Eastern Navajo-Diné Against
Uranium Mining
P.O. Box 471
Crownpoint, New Mexico 87313
BY FIRST CLASS MAIL

Marilyn Morris
c/o Samuel D. Gollis
Hopi Legal Services
Highway 263 behind Hopi Judicial Complex
Keams Canyon, AZ 86034
BY FIRST CLASS MAIL

Commissioner Nils J. Diaz
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852
BY FIRST CLASS MAIL AND EMAIL

Commissioner Jeffrey S. Merrifield
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852
BY FIRST CLASS MAIL AND EMAIL

Richard A. Meserve, Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852
BY FIRST CLASS MAIL AND EMAIL

Geoffrey H. Fettus
Douglas Meikeljohn
New Mexico Environmental Law Center
1405 Luisa Street Suite 5
Santa Fe, NM 87505
BY FIRST CLASS MAIL AND EMAIL

Diane Curran Esq.
Harmon Curran Spielberg & Eisenberg
1726 M Street N.W., Suite 600
Washington, DC 20036
BY FIRST CLASS MAIL AND EMAIL

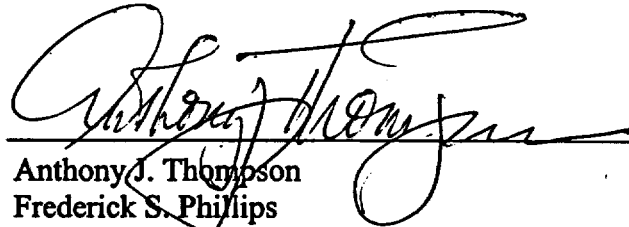
W. Paul Robinson
Chris Shuey
Southwest Research and Information Center
P.O. Box 4524
Albuquerque, New Mexico 87106
BY FIRST CLASS MAIL

Grace Sam
c/o Samuel D. Gollis
Hopi Legal Services
Highway 263 behind Hopi Judicial Complex
Keams Canyon, AZ 86034
BY FIRST CLASS MAIL

Commissioner Edward McGaffigan, Jr.
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852
BY FIRST CLASS MAIL AND EMAIL

Commissioner Greta J. Dicus
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852
BY FIRST CLASS MAIL AND EMAIL

Herb Yazzie, Attorney General
Steven J. Bloxham, Esq.
Navajo Nation Department of Justice
P.O. Box 2010
Window Rock, AZ 86515
BY FIRST CLASS MAIL

A handwritten signature in cursive script, appearing to read "Anthony J. Thompson", written over a horizontal line.

Anthony J. Thompson
Frederick S. Phillips
David C. Lashway
SHAW PITTMAN
2300 N Street, N.W.
Washington, DC 20037

Counsel for Hydro Resources, Inc.