



## 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.

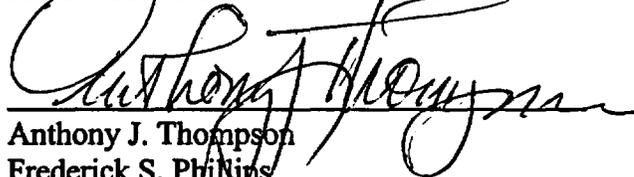
The Commission, in CLI-00-08, has determined that HRI's license application was deficient for failing to satisfy completely the financial assurance requirements and has required HRI to submit specified additional information. The Commission's Order expressly provides that Intervenor shall then have thirty 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 20<sup>th</sup> day of June, 2000.

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ON BEHALF OF HYDRO RESOURCES, INC.

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

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

\_\_\_\_\_  
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

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.

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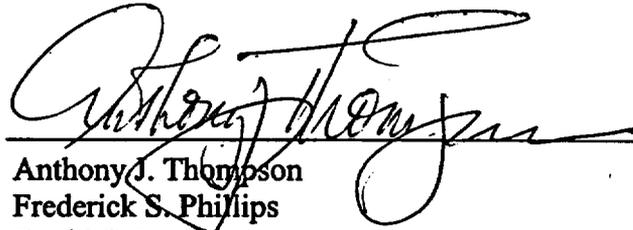
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