

RAS 3013

ShawPittman

A Law Partnership Including Professional Corporations

ANTHONY J. THOMPSON
202.663.9198
anthony.thompson@shawpittman.com

DOCKETED
USNRC

01 MAY -1 P4:03

April 30, 2001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

By Hand Delivery

Richard A. Meserve, Chairman
U.S. Nuclear Regulatory Commission
Mail Stop 0-16 C1
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

Re: In the Matter of Hydro Resources, Inc., Dkt. No. 40-8968-ML

Dear Chairman Meserve:

In accordance with the Commission's Order dated January 31, 2001 in the above referenced matter, Hydro Resources, Inc. ("HRI"), through its undersigned counsel, hereby notifies the Commission of its intention to retain, in full, NRC materials license SUA-1508, which permits HRI to conduct *in situ* leach mining at four sites in New Mexico: Sections 8 and 17, located near Church Rock, New Mexico, and the Unit 1 and Crownpoint sites, located near Crownpoint, New Mexico. See *In the Matter of Hydro Resources, Inc.*, CLI-04, (Jan. 31, 2001) at 13 ("Order").

As you know, SUA-1508 was the subject of a challenge brought by Intervenors Eastern Navajo Dine Against Uranium Mining ("ENDAUM"), Southwest Research and Information Center ("SRIC"), and Marilyn Morris and Grace Sam. Due to the number of technical issues involved, the novel legal issues posed, the number of contentions raised by the Intervenors, and the fact that the license authorizes only a phased development of the properties,¹ the Presiding Officer developed a phased approach to this Subpart L proceeding. The first phase ("Phase I") of the proceeding dealt with HRI's intended operations at Section 8 and "any issue that challenged the [overall] validity of the license

¹ Specifically, the license permits HRI to begin conduct mining operations at Church Rock Section 8. HRI may not however, begin injecting lixiviant at either the Section 17, Unit 1 or Crownpoint locations without first conducting an acceptable groundwater restoration demonstration at Church Rock Section 8. See SUA-1508, Section 10.28.

Template = SECY-043

2300 N Street, NW Washington, DC 20037-1128

202.663.8000 Fax: 202.663.8007

www.shawpittman.com

SECY-02

Washington, DC
New York
London

Richard A. Meserve, Chairman

April 30, 2001

Page 2

issued to HRI." *See* Memorandum and Order (Sept. 22, 1998) at 2 (unpublished); *see also* Order at 3. Phase I of the hearing was concluded with the issuance of the Order, except for one outstanding issue that the parties are presently addressing before the Presiding Officer pursuant to the Commission's remand -- the adequacy of HRI's restoration action plan (RAP). The NRC staff approved the supplemented RAP on April 16, 2001.

With respect to the remaining mining locations that are the subject of the license, the Commission's Order directs HRI to provide notice to all parties to the proceeding indicating whether HRI intends to retain its license in full and to proceed with the remaining phases of the hearing, or in the alternative, whether HRI intends to apply for an amendment to reduce the scope of its license. This letter confirms that HRI intends to retain its license in full and wishes to proceed with the next phase of the hearing. To be crystal clear, should one or all Intervenor desire to continue to prosecute their case before the Presiding Officer, HRI will vigorously defend its license.

We now turn to the specifics concerning resuming the hearing process. In its Order, the Commission directs the Presiding Officer "to consult with the parties and to establish a precise schedule for further proceedings." Order at 13. The Commission should provide the Presiding Officer with explicit additional guidance on this and other points in light of the confusion that arose during Phase I of this Subpart L hearing.

First, the Commission should direct the Presiding Officer to commence Phase II of the hearing three (3) months from the date of this letter, which is exactly six (6) months from the date of the Order. *See* Order at 13. Moreover, as discussed above and at length in the Order, because of the phased nature of the mining operations and the license requirement concerning restoration at Section 8, Phase II of this hearing should address Intervenor's contentions regarding Section 17, which is adjacent to Section 8 and which HRI intends to mine immediately following Section 8. Following Phase II, Phase III governing the Unit 1 location should commence. Following completion of Phase III, Phase IV addressing the Crownpoint location should begin. The various mining locations should be handled separately because as the Presiding Officer acknowledged, to address each of the locations at once would be unwieldy and too complex due to the technical and legal issues involved.² *See* Memorandum and Order (Sept. 22, 1998) (unpublished).

² HRI notes that the Commission's Order does not question the validity of the Presiding Officer's earlier order (Memorandum and Order (Sept. 22, 1998) (unpublished)), "bifurcating" the

Footnote continued on next page

Richard A. Meserve, Chairman

April 30, 2001

Page 3

Second, the Commission should advise the Presiding Officer that just as in Phase I of the hearing, further information must be provided by HRI in the latter phases of the hearing. For example, prior to litigating Phase II, HRI must provide additional financial assurance information as part of the RAP for Section 17 because the RAP will be based in part on the information developed from the activities at Section 8. Similarly, financial assurance plans must be developed for Unit 1 and Crownpoint, to the extent feasible without operational data, before issues relating to the RAP for those locations can be litigated in the hearing context.

Third, to ensure that Phase II of this hearing is effective and efficient, does not result in the mere rehashing of issues previously decided, and better focuses the resources of the involved parties and the NRC staff,³ the Commission should direct the Presiding Officer to require Intervenors to submit a list of issues (*i.e.* referred to in Phase I as Areas of Concern) concerning Section 17. HRI should then be given the opportunity to comment on which of those Areas of Concern, if any, should be part of the hearing.⁴ Following HRI's submission, the Presiding Officer should render a decision indicating which Areas of Concern will be admitted to the proceeding and setting a schedule for the filing of the various briefs concerning the admitted Areas of Concern.

Finally, and perhaps most importantly, the Commission should admonish the parties that abuse of the NRC hearing process will not, under any circumstance, be

Footnote continued from previous page

proceeding into various phases. Rather, it merely reverses the Presiding Officer's later order (LBP-99-40, 50 NRC 273 (1999)), holding the remainder of the proceedings in abeyance: "Our careful review of the record leads us to reverse LBP-40 . . ." *See* Order at 7.

³ The NRC has proposed amendments to the rules governing its adjudicatory process to make the hearing process "more effective and efficient" and "better focus the limited resources of the parties." *See* 66 Fed. Reg. 19610 (April 16, 2001). The proposed rules call for the easing of the requirements governing Subpart G proceedings to make them more efficient, like the Subpart L process. HRI notes however, that if the Subpart G rules are to be eased but result in a hearing similar to the Subpart L Phase I proceeding in this matter, a rule change would be a waste of time because the resulting hearings would be no more efficient than the current Subpart G hearing process.

⁴ This is in keeping with NRC's proposed rule which discusses the benefits of the filing of contentions in all NRC hearings, including Subpart L proceedings and calls for contentions to be submitted in all hearings. *See* 66 Fed. Reg. at 19621.

Richard A. Meserve, Chairman

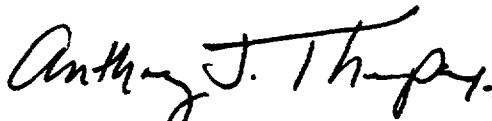
April 30, 2001

Page 4

permitted. As the Commission itself stated, "the Commission has a 'long-standing commitment to the expeditious completion of adjudicatory proceedings.'" Order at 7, *citing* "Statement of Policy on Conduct of Adjudicatory Proceedings," CLI-98-12, 48 NRC 18, 24 (July 28, 1998) ("Policy Statement"). Applying this principle here, the Presiding Officer should be specifically instructed that he should not permit unlimited replies and that interlocutory appeals filed for solely for the purpose of dragging out the process and/or driving HRI into financial ruin are unacceptable and may subject the filing party to sanction. The Commission further stated in its Order that the objectives of the adjudicatory procedures are three-fold: "to provide a *fair* hearing process, to *avoid* unnecessary *delays* in the NRC's review and hearing process, and to produce an informed adjudicatory record that supports agency decision-making . . ." *Id.* (emphasis added). Should Phase II of this hearing proceed in a manner similar to Phase I, these objectives certainly will not be realized. Accordingly, the Commission should provide the Presiding Officer with additional guidance so as "to instill discipline in th[is] hearing process and ensure a prompt yet fair resolution of contested issues . . ." *See* Policy Statement, CLI-98-12, 48 NRC at 19. Without further guidance, the remaining phases of this proceeding will undoubtedly fail to satisfy the goals of Subpart L, which is intended to provide for "more expedient proceedings involv[ing] less . . . delay for parties and the Commission." Order at 9, *citing* Final Rule, "Informal Hearing Procedures for Materials Licensing Adjudications," 54 Fed. Reg. 8, 269, 8271, 8275 (Feb. 28, 1989).

Again, HRI will retain its full license and proceed with the next phase of the hearing. We hope that the Commission considers the points raised above and provides the Presiding Officer with specific instruction as to how the proceeding should be conducted. HRI believes that further instruction is a *necessity* to ensure that the process is fair to all parties, effective and efficient, and in keeping with the purpose and goals of Subpart L.

Very truly yours,



Anthony J. Thompson

Counsel to Hydro Resources, Inc.

cc: Service List

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:)
)

HYDRO RESOURCES, INC.)
)
_____)

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

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 30th day of April, 2001.

Administrative Judge
Thomas S. Moore, Presiding Officer
Atomic Safety and Licensing Board
Mail Stop T-3 F23
Two White Flint North
11545 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

Administrative Judge Thomas D. Murphy
Special Assistant
Atomic Safety and Licensing Board
Mail Stop T-3 F23
11545 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 Commission Appellate Adjudication
One White Flint North
11555 Rockville Pike
U.S. Nuclear Regulatory Commission
Rockville, Maryland 20852
BY FIRST CLASS MAIL

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

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

Mr. Mark Pelizza
President
Uranium Resources Inc.
50 South Edmonds Lane, Suite 108
Lewisville, TX 75067
BY FIRST CLASS MAIL AND EMAIL

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

John Hull
Office of the General Counsel
Mail Stop O-15 D21
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
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

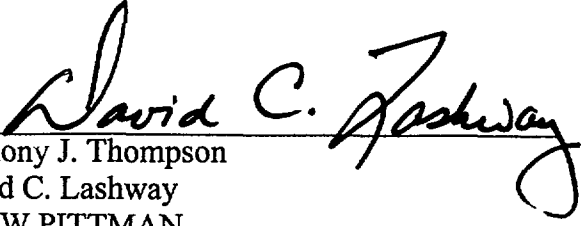
W. Paul Robinson
Chris Shuey
Southwest Research and Information Center
P.O. Box 4524
Albuquerque, New Mexico 87106
BY FIRST CLASS MAIL

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



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

Counsel for Hydro Resources, Inc.