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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Presiding Officer
Thomas D. Murphy, Special Assistant

In the Matter of

Hydro Resources, Inc.
PO Box 15910
Rio Rancho, New Mexico 87174

Docket No. 40-8968-ML

ASLBP No. 95-706-01-ML

May 2, 2001

ORDER

In CLI-01-04, 53 NRC 31, 71 (2001), the Commission remanded this proceeding to the Presiding Officer for further proceedings. The Commission also ordered Hydro Resources, Inc. (HRI), within 3 months of its decision, to “indicate on the record whether it wishes to retain its full license and proceed to hearing, or modify it to cover only the Section 8 site”. 53 NRC at 44. Finally, the Commission directed the Presiding Officer “to consult with the parties and to establish a precise schedule for further proceedings.” *Id.* In accordance with the Commission’s instructions, the Presiding Officer will hold a telephone scheduling conference with the parties to this proceeding on Thursday, May 10, 2001 at 11 a.m. eastern daylight time. Counsel for all parties shall participate. To participate, counsel for each of the parties shall call 301-231-5539 and enter passcode 2162# at a few minutes before 11 a.m. eastern daylight time on the date of the telephone conference.

Previously in another aspect of this proceeding, the Presiding Officer, on January 30, 2001, issued an Order setting a telephone conference for February 7, 2001 at 3:00 p.m. with instructions for counsel to call into a bridge telephone number. That Order was served upon all parties and counsel for all affected parties were provided a copy by e-mail that same day. On February 7th, counsel for all affected parties, except HRI's counsel of record, Mr. Anthony J. Thompson, timely called in to participate. Mr. Thompson, however, did not participate. Neither did Mr. Thompson inform the Presiding Officer he was unavailable for the conference, move to reschedule the conference, or arrange for different counsel to represent HRI. While counsel for the other parties patiently waited for the telephone conference to begin, the Presiding Officer attempted to contact Mr. Thompson, only to learn that he was unavailable. Eventually another attorney from Mr. Thompson's office was located to participate on HRI's behalf in the telephone conference. To date, Mr. Thompson has made no filing informing counsel for the other parties or the Presiding Officer why he ignored the January 30, 2001 order setting the telephone conference. Similarly, Mr. Thompson has made no filing apologizing to participating counsel or the Presiding Officer for delaying the conference and inconveniencing them.

In the event Mr. Thompson, other counsel for HRI, or any other party's counsel, cannot participate in the May 10, 2001, telephone conference, counsel should inform the Presiding Officer by close of official NRC business hours Monday, May 7, 2001 by e-mail TSM2@NRC.GOV or facsimile notice (301-415-5599). Any counsel wishing to change the date of the conference should also provide the Presiding Officer by the same date and time three alternative dates and times acceptable to all other counsel. Any failure to comply with the provisions of this order will be viewed with disfavor. Because HRI's counsel has previously ignored one scheduling order of the Presiding Officer, counsel for HRI would be well advised

scrupulously to avoid causing any further unnecessary delay or injecting any further inefficiency into this proceeding in the future.

At the May 10, 2001, telephone conference, counsel for each party should be prepared to discuss a schedule for the conduct of the remainder of the proceeding. Bearing in mind the time limits set forth in the Commission's Rules of Practice, counsel for each party should prepare a complete proposed schedule for completing the proceeding. Counsel should either e-mail or fax the proposed schedule to the Presiding Officer and counsel for each of the other parties by close of NRC official business hours on Tuesday, May 8, 2001, along with a brief listing and appropriate explanation of any other matters that counsel would like addressed during the telephone conference. In addition, counsel for each party should set forth his or her views on whether each of the remaining sites covered by HRI's license should be considered together, or separately and consecutively.

Because the Commission remanded the proceeding to the Presiding Officer and there are no other portions of the proceeding still before the Commission, the Presiding Officer has had jurisdiction over the entire proceeding since the Commission's remand. Rather than file an appropriate notice with the Presiding Officer complying with the Commission's directions to indicate on the record whether it wished to retain its full license and proceed to hearing or, alternatively, modify its license, Mr. Thompson had hand-delivered a letter, dated April 30, 2001 and addressed to the Chairman of the Commission, to the Chairman. His office then e-mailed a copy of the letter to the Presiding Officer after the close of official NRC business hours and apparently served the letter upon other parties by regular mail. Instead of waiting for the Presiding Officer to establish a schedule as directed by the Commission, Mr. Thompson, through his letter, instructs the Commission on how it should order the Presiding Officer to conduct the proceeding. So that there is no misunderstanding, Mr. Thompson should be aware

that a hand-delivered letter to the Chairman of the Commission is not a proper notice “on the record” that HRI wishes to retain its full license when jurisdiction of the proceeding resides in the Presiding Officer. Further, Mr. Thompson should be aware that, even though this proceeding is being conducted pursuant to 10 CFR Part 2, Subpart L of the Commission’s Rules of Practice, “letter practice” is not the appropriate form for filings before the Presiding Officer. Mr. Thompson may, of course, write letters to whomever and for whatever purposes he chooses on whatever topics he pleases, with one exception. In this proceeding, all written communications to the Presiding Officer should be by appropriate pleadings properly served on all parties.

Finally, it appears from the certificate of service attached to Mr. Thompson’s April 30, 2001, letter that HRI may be using an out-of-date service list. Because of the age of this proceeding, Mr. Thompson should provide the Presiding Officer and counsel for the other parties by May 7, 2001, a complete up-to-date service list of all parties that includes the complete mailing address, e-mail address, and facsimile number of each party’s counsel.

It is so ORDERED.

By the Presiding Officer

/RA/

Thomas S. Moore
ADMINISTRATIVE JUDGE

Rockville, Maryland
May 2, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

HYDRO RESOURCES, INC.

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Docket No. 40-8968-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (LBP-01-16) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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LB ORDER (LBP-01-16)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 2nd day of May 2001