

May 7, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of)
)
HYDRO RESOURCES, INC.) Docket No. 40-8968-ML
650 S. Edmonds Lane)
Lewisville, Texas 75067)

NRC STAFF'S RESPONSE TO PRESIDING OFFICER'S ORDER

I. INTRODUCTION

By order dated May 2, 2001 (LBP-01-16, 53 NRC ___)(May 2 Order), the Presiding Officer set May 10 as the date for holding a scheduling conference by telephone, and requested the parties¹ to submit, by May 8, proposed schedules for completing the proceeding. See May 2 Order, at 1, and 3. The Presiding Officer further requested the parties to state their respective views on whether issues pertaining to HRI's proposed mining sites at Section 17, Unit 1, and Crownpoint, "should be considered together, or separately and consecutively." *Id.*, at 3. The Staff's proposed schedule for completing the proceeding, and its views on the manner in which issues should be considered, are accordingly set forth below.

II. DISCUSSION

A. Proposed Schedule for Resolving Section 8 Financial Issues

By unpublished order dated April 26, 2001 (April 26 Order), the Presiding Officer permitted intervenors ENDAUM and SRIC to submit a reply, by May 24, 2001, on certain financial assurance issues regarding HRI's Church Rock Section 8 site. Specifically, the May 24 reply is to address

¹ The parties in the above-captioned proceeding are Eastern Navajo Diné Against Uranium Mining (ENDAUM), Southwest Research and Information Center (SRIC), Grace Sam and Marilyn Morris (collectively, Intervenors), Hydro Resources, Inc. (HRI), and the staff of the Nuclear Regulatory Commission (Staff).

(1) the written presentations filed on January 22, 2001 by HRI and the Staff in response to ENDAUM's and SRIC's joint "Response to [HRI's] Cost Estimates and Restoration Action Plan of November 21, 2000," filed on December 21, 2000; (2) HRI's March 16, 2001 response to a Staff request for additional information (dated February 16, 2001); and (3) the Staff's April 16, 2001 approval of HRI's November 21, 2000 Restoration Action Plan (RAP).² See April 26 Order, at 1.

After considering the May 24 reply, the Presiding Officer should determine whether he has an adequate record on which to decide the pending financial assurance issues pertaining to HRI's Church Rock Section 8 site. If he finds there is not such a record, the Presiding Officer should, by June 15, 2001, propound additional written questions to the parties, to be simultaneously answered by the parties within 15 days of when they are propounded. See 10 C.F.R. § 2.1233(a). Within 30 days of receiving the answers, the Presiding Officer should render his initial decision resolving the pending financial assurance issues pertaining to HRI's Church Rock Section 8 site, pursuant to 10 C.F.R. § 2.1251.

B. Proposed Schedule for Resolving non-Section 8 Issues

If the above schedule is implemented, this will better enable the Presiding Officer and parties to begin the adjudication of the non-Section 8 issues within the six-month deadline -- measured from January 31, 2001 -- established by the Commission. See CLI-01-4, 53 NRC 31, 34 (2001). There, in directing the resumption of the hearing process, the Commission stated that issues "on all sites" were to be considered (*id.*, 53 NRC at 38) in order to allow the Intervenors "to litigate the rest of their concerns." *Id.*, at 43. The Commission cited the cumulative impacts issue as best illustrating "the awkwardness inherent in conducting a site-by-site hearing on what has

² The above-referenced November-April actions were carried out in accordance with the Commission's order remanding financial assurance issues to the Presiding Officer in this proceeding (see CLI-00-8, 51 NRC 227, 242 (2000)), and the schedule agreed upon during a February 7, 2001 telephone conference.

been proposed and licensed as a multi-site project.” *Id.*, at 59. On this point the Commission further stated as follows:

In the resumed hearing the intervenors will have the opportunity to raise all their cumulative impacts concerns that involve the other project sites, including the effects of moving the Town of Crownpoint’s wells, the groundwater impacts from the proposed sequence of mining, and the cumulative groundwater impacts from operations at the four sites. In the resumed hearing, the Presiding Officer must consider the impacts of Section 8 along with those of the other sections, to assure that all potential inter-regional cumulative effects have been adequately considered and discussed in the FEIS.

Id. Based on these statements of the Commission, the Staff believes that the issues pertaining to HRI’s proposed mining sites at Section 17, Unit 1, and Crownpoint, must be considered together, rather than separately and consecutively. Accordingly, the Staff does not agree with HRI that a phased hearing process, moving from Church Rock Section 17 to Unit 1 to Crownpoint, can be implemented. See HRI’s letter to Chairman Meserve, dated April 30, 2001, at 2 (describing proposed hearing phases II - IV).

The Staff’s proposed schedule for completing the proceeding of the non-Section 8 issues is as follows:

1. Within 10 days of the Presiding Officer’s initial decision resolving the pending financial assurance issues pertaining to HRI’s Church Rock Section 8 site, the Intervenor should be required to submit a list of the areas of concern they still wish to litigate pertaining to HRI’s proposed mining sites at Section 17, Unit 1, and Crownpoint.

2. Depending on the number of concerns identified, HRI and the Staff should be given either 20 or 30 days to file responses. The Staff anticipates there will be a number of legal issues to resolve regarding whether the doctrine of *res judicata* will prevent the Intervenor from litigating various areas of concern, based on prior rulings made during the Section 8 proceeding.

3. Within 30 days of the HRI and Staff responses, the Presiding Officer should rule on what areas of concern remain to be litigated. At this time -- assuming one or more areas of concern

remain -- the Presiding Officer should also establish an appropriate schedule for the filing of written presentations by the parties, pursuant to 10 C.F.R. § 2.1233(a), so that an adequate record for decision can be created for all remaining issues.

C. Other Matters to be Discussed at the May 10 Telephone Conference

None.

Respectfully submitted,

/RA/

John T. Hull
Counsel for NRC Staff

Dated at Rockville, Maryland
this 7th day of May 2001

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CERTIFICATE OF SERVICE

I hereby certify that signed copies of "NRC STAFF'S RESPONSE TO PRESIDING OFFICER'S ORDER" have been served on those listed below (except those marked by double asterisks, to whom only electronic copies were sent), either by U.S. Mail, first class, or by internal distribution, this 7th day of May 2001. Additionally, electronic copies have been transmitted this date to those listed below and marked by single asterisks; a copy was sent by facsimile to Mr. Dobson, counsel for Grace Sam and Marilyn Morris.

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