

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 8937

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 12/07/04

SERVED 12/07/04

Before Administrative Judges:

Thomas S. Moore, Presiding Officer
Richard F. Cole, Special Assistant
Robin Brett, 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

December 7, 2004

Order

(Denying Motion to Suspend Proceeding)

On October 25, 2004, the Commission ordered the suspension of public access to the NRC's Agencywide Documents Access and Management System (ADAMS) to conduct a security review of the documents in the electronic library. Thereafter, on November 2, 2004, the Navajo Diné Against Uranium Mining and the Southwest Research and Information Center (Intervenors) filed a motion to suspend the proceeding until public access to ADAMS is restored.

As part of an earlier November 5, 2004 scheduling order, the Presiding Officer directed the NRC Staff to include in its response to the Intervenors' suspension motion the Staff's current estimate of the date on which the documentary material related to this proceeding will be available publicly in ADAMS. That order also instructed the parties to include the appropriate ADAMS accession numbers and Hearing File numbers for all documents referenced in their written presentations.

In footnote 20 to its November 15, 2004 response opposing the suspension motion, the Staff stated that "[p]ublic access to portions of ADAMS and the electronic hearing docket may

be restored sometime later this week. The Staff will keep the Board [sic] and the parties informed of any developments affecting document access.” For its part Hydro Resources, Inc. (HRI) stated in its November 15, 2004 response that it had no objection to a thirty day suspension to mid-December.

The Intervenor’s motion to suspend the proceeding until public access to ADAMS is restored is denied. Over the course of the proceeding and independent of ADAMS, the Intervenor has received copies of all documents in the Hearing File. Further, the Staff states in its response to the suspension motion that there have been no recent exchange of documents between the Staff and HRI. Therefore, with the steps outlined below, the Intervenor should not be prejudiced in the preparation of their initial written presentation by not having access to ADAMS. As set forth in the November 5, 2004 scheduling order, the Intervenor’s initial presentation shall be filed forty-five (45) days from the date of this order (i.e., January 21, 2005).

To ensure that the schedule set forth in the November 5, 2004 order is met, counsel for the NRC Staff shall send to the Intervenor by overnight mail copies of any documents that are required to be placed in the hearing file no more than three (3) days after they are received or generated by the Staff. Because Staff counsel has full access to ADAMS, counsel shall conduct a reasonable, good faith, and expeditious search of ADAMS covering the period from October 1, 2004 to the present for any obviously relevant generic documents (e.g., correspondence, reports, notices and the like involving similar projects and facilities) relating to the issues involved in the first grouping of issues for the initial written presentations. Staff counsel shall conduct such search no less than seven (7) days from the date of this order and every seven (7) days thereafter until public access to ADAMS is restored or the due date of the Intervenor’s first written presentation, whichever comes first. Staff counsel shall then immediately provide to the Intervenor by overnight mail any such documents found in ADAMS

or, in the alternative, shall provide to the Intervenors by overnight mail any non-sensitive cover pages or other identifying documents sufficient to alert the Intervenors to the existence and general contents of such documents.

Finally, in the event public access to ADAMS is not restored by the due date of its first written presentation, the Intervenors shall leave at least twelve (12) blank spaces in its filing after the word ADAMS accession No. for the later insertion of the actual ADAMS accession numbers for each referenced document. Thereafter, Staff counsel shall have seven (7) days from the Intervenors' filing to provide all parties and the Presiding Officer with a listing of the document titles and ADAMS accession numbers left blank by the Intervenors. Such listing shall present the document title and ADAMS accession numbers in the identical order in which the documents appear in the Intervenors filing.

It is so ORDERED.

BY THE PRESIDING OFFICER¹

/RA/

Thomas S. Moore
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 7, 2004

¹Copies of this Order were sent this date by Internet e-mail to counsel for all participants.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (DENYING MOTION TO SUSPEND PROCEEDING) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 7th day of December 2004