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United States Nuclear Regulatory Commission
Attn: Keith McConnell, Deputy Director
Decommissioning and Uranium Recovery
Licensing Directorate
Division of Waste Management and Environmental
Protection
Office of Federal and State Materials and
Environmental Management Programs
Washington, D.C. 20555-0001

Dear Mr. McConnell:

By this letter, Hydro Resources, Inc. (HRI), current holder of United States Nuclear Regulatory Commission (NRC) License No. SUA-1508 for the Crownpoint Uranium Project (CUP) (hereinafter the "License"), hereby requests that NRC Staff continue to move expeditiously to address the proposed revisions to HRI's CUP restoration action plans (RAP) and to proceed with the renewal of the aforementioned license, if necessary, based upon documentation filed to date by HRI.

As of the date of this letter, the terms and conditions of the License have been subject to extensive administrative litigation before NRC's Atomic Safety and Licensing Board (Licensing Board), the Commission, the United States Court of Appeals for the Tenth Circuit (Tenth Circuit), and the United States Supreme Court. Pursuant to the requirements imposed upon HRI by the decisional bodies in this litigation (i.e., the Licensing Board and the Commission), HRI has submitted minor modifications to its CUP RAPs which it anticipates can be addressed by NRC Staff and will meet with NRC Staff's approval. Other than these minor modifications, HRI has not pursued or conducted any in situ leach uranium recovery (ISR) operational activities pursuant to the License at the proposed CUP, including most notably at the first proposed ISR site (Church Rock Section 8). Thus, HRI respectfully requests a status update on NRC Staff's current plans regarding the review and approval of the revised CUP RAPs and renewal of HRI's License, if necessary.

It is HRI's position that the Commission's prohibition on the use of the License issued on May 25, 2000, effectively stayed the effectiveness of the License issued on January 5, 1998, until NRC Staff "re-activates" such license. As a result, given that its license has not been *effective* for a five (5) year period and has not yet been "re-activated," it is HRI's position that license renewal is not yet required until two (2) years and two hundred and twenty-four (224)

days after NRC Staff deems HRI's license "re-activated." In the event that NRC Staff concurs with this position, HRI will voluntarily withdraw its request for license renewal. In the event that NRC Staff does not concur with this interpretation, in light of the detailed technical and environmental analyses conducted by NRC Staff and the additional modifications made to the License pursuant to the administrative litigation, and the fact that HRI has not attempted to commence licensed operations, it is HRI's position that NRC Staff should renew the License without the need for additional data, information or analyses or for re-publication of HRI's license renewal to provide an opportunity for an administrative hearing.

I. PROCEDURAL HISTORY: ADMINISTRATIVE LITIGATION AND TIMELY RENEWAL

On January 5, 1998, NRC issued the License with a term of five (5) years for the proposed CUP ISR project which is composed of four separate project sites: (1) Church Rock Section 8; (2) Church Rock Section 17; (3) Unit One; and (4) Crownpoint. After issuance of this license, the Licensing Board commenced its administrative hearing process regarding the merits of certain contentions proffered by the aforementioned Intervenor. During the course of this hearing, the Intervenor alleged that HRI's proposed financial assurance approach to Church Rock Section 8 and NRC Staff's approval of same was inadequate. At the Licensing Board level, the Presiding Officer determined that NRC Staff's review of HRI's proposed financial assurance approach was consistent with NRC regulations as applied to ISR facilities. On appeal, the Commission interpreted its regulations at 10 CFR Part 40, Appendix A, Criterion 9 to require that license applicants proposing new ISR projects provide a RAP with preliminary financial assurance cost estimates for decommissioning and decontamination (D&D), including groundwater restoration, prior to the issuance of an NRC license. *See generally In the Matter of Hydro Resources, Inc.* (Crownpoint Uranium Project), CLI-00-08, 51 NRC 227 (May 25, 2000). While NRC Staff's approval of the RAP is required prior to license issuance, the Commission determined that the actual financial mechanism/instrument providing financial assurance for the proposed project need not be posted until the licensee is prepared to commence licensed operations. *Id.*

Despite the fact that it found this aspect of NRC Staff's review of HRI's license application deficient and presumably because this interpretation of Criterion 9 was essentially "breaking new ground," the Commission determined that HRI's license should not be revoked; but rather, the Commission imposed a prohibition on the use of HRI's license until NRC Staff received and approved RAPs for each of the four (4) CUP project sites. *Id.* Accordingly, HRI considered the license to no longer be *effective*. Over the course of 2001 and 2002, HRI submitted and NRC Staff approved RAPs for each CUP project site. After these approvals were issued, the provisions of the RAP for Church Rock Section 8 became subject to the aforementioned administrative hearing process. On February 27, 2004, the Licensing Board issued an Order which prohibited HRI from conducting ISL operations under the License pending resolution of three specific RAP issues: (1) re-calculation of HRI's Section 8 surety using the "tremie" line method for well-plugging, (2) re-calculation of reclamation costs based on the average costs estimated by two or more independent contractors, without assuming any use of HRI's "major" equipment, and (3) re-calculation of labor costs using the average costs

estimated by two independent contractors or estimates provided by Intervenor without assuming employees would wear "multiple hats." See *In the Matter of Hydro Resources, Inc.* (Crownpoint Uranium Project), *Memorandum and Order: Ruling on Restoration Action Plan*, LBP-04-03, at 34 (February 27, 2004) (LBP-04-03). HRI appealed Items # 2 and 3 above in LBP-04-03 to the Commission and, on December 8, 2004, the Commission determined that they were not in accord with NRC regulations and, thus, were inapplicable to HRI's RAPs. Item #1 above was conceded by HRI and considered to be a component of the aforementioned RAP revisions. See generally *In the Matter of Hydro Resources, Inc.* (Crownpoint Uranium Project), CLI-04-33, 60 NRC 581 (December 8, 2004).

After conclusion of the administrative hearing process for Church Rock Section 8, the Licensing Board proceeded to litigate the remaining three CUP project sites, including their respective RAPs. On July 20, 2005, the Presiding Officer issued an order holding that HRI's NRC license and its health and safety commitments encompassed therein with respect to potential operational groundwater impacts, groundwater restoration, and financial assurance adequately protect public health and safety. The Presiding Officer determined that the law of the case doctrine precluded consideration of several of Intervenor's challenges. But, the Presiding Officer also held that Intervenor's arguments were insufficient substantively to warrant revocation or modification of HRI's NRC license. The Presiding Officer's decision also required HRI and NRC Staff to revise the applicable secondary groundwater standard for uranium to reflect new United States Environmental Protection Agency (EPA) Safe Drinking Water Act (SDWA) requirements and that HRI's restoration action plans (RAPs) for the Church Rock Section 17, Unit One, and Crownpoint uranium recovery sites be revised to provide financial assurance cost estimates for surveying and offloading of wastes and decontamination of transport containers at licensed disposal sites. See *In the Matter of Hydro Resources, Inc.* (Crownpoint Uranium Project), LBP-05-17 at 62 (July 20, 2005) (hereinafter "LBP-05-17"). HRI did not contest either of these requirements.

After the administrative litigation in its entirety was completed at the Commission level, on February 9, 2007, Intervenor appealed the Commission's final determinations to the Tenth Circuit for review. After written submissions and oral argument, on March 8, 2010, the Tenth Circuit determined that HRI's License with the revisions mandated by the Commission is adequately protective of public health and safety and the environment. See generally *Morris v. U.S. Nuclear Regulatory Com'n*, 598 F.3d 677 (10th Cir. March 8, 2010). Then, on September 15, 2010, Intervenor appealed the Tenth Circuit's decision to the United States Supreme Court for review. The federal government and HRI waived the right to a response and, on November 15, 2010, the Court declined review of Intervenor's appeal. At that time, the administrative litigation over HRI's License was terminated finally after sixteen (16) years.

Due to the ongoing nature of this administrative litigation, on August 22, 2002 and in accordance with its License, HRI submitted a request for timely renewal of its License. On December 16, 2002, NRC Staff accepted HRI's request and issued a Federal Register notice providing members of the public, interested stakeholders, and Intervenor with notice that HRI's request had been received and that an opportunity for a hearing was available. No requests for a hearing on the license renewal were submitted. Then, after the time period for a

hearing elapsed, NRC Staff determined that license renewal review would be held in abeyance pending resolution of the aforementioned administrative litigation.

On July 29, 2010, HRI and NRC Staff held a public meeting at NRC Headquarters at which Intervenor and other members of the public participated. Representatives of HRI and NRC Staff discussed a variety of items including a summary of the administrative litigation and its results, two planned submissions from HRI, and the path forward for review and approval of two planned submissions: (1) revisions to HRI's CUP RAPs as required by the Commission and (2) renewal of HRI's License.

On October 18, 2010, HRI submitted the required revisions to its CUP RAPs and is aware that NRC Staff is working on a response to those submissions. By this letter, however, HRI is requesting a response from NRC Staff regarding three (3) items: (1) a status update on review of its revised RAPs; (2) a response to HRI's position that its License does not yet warrant timely license renewal due to the Commission's prohibition on its use issued in 2000 and the Licensing Board's subsequent prohibition on its use in LBP-04-03 in 2004; and finally (3) a response to HRI's position that if renewal of its License is necessary, there should be no new notice of an opportunity for a hearing.

To date, HRI submits that the affected environment within and outside the boundaries of the proposed Church Rock Section 8 ISR property has not changed since NRC completed its evaluation of the CUP license application, including its final environmental impact statement (FEIS).¹ As stated above, HRI has not undertaken any site development activities at the Church Rock Section 8 property in accordance with its License due to the Commission's prohibition on its use issued in 2000, and there have been no significant demographic, economic or cultural changes on the Church Rock Section 8 property or within the areas assessed by NRC. HRI's position is that it will continue to not engage in such activities until NRC Staff completes review of its proposed RAP revisions and "re-activates" the License.

II. REQUESTED ACTIONS

A. Status Update on Review of Revised Restoration Action Plans and License Renewal Application

As stated above, on July 29, 2010, HRI and NRC Staff held a public meeting at NRC Headquarters at which representatives of NRC Staff, HRI, and representatives of some of the aforementioned Intervenor participated. At that meeting, HRI sought to determine what the appropriate path forward for re-activation of its License and license renewal, if necessary, would be and the review process to be used by NRC Staff for each item. During the meeting, NRC Staff indicated that the processes to be used for re-activation of HRI's License and license renewal was still under review and that, after HRI submitted its revisions to the aforementioned RAPs per the Commission's directives, NRC Staff would commence review of such revisions.

¹ For example, according to United States Census Data for McKinley County, New Mexico, the population has decreased from a 2000 number of 74,589 (two years after NRC Staff's FEIS was completed) to a 2010 number of 70,514.

Further, NRC Staff specifically noted that the process associated with license renewal potentially may involve requests by Intervenor or other interested stakeholders for “late intervention” pursuant to 10 C.F.R. § 2.309(c) or re-issuance of the aforementioned December 16, 2002, notice of opportunity for a hearing. HRI respectfully requests that NRC Staff provide a status update on the review process for and status of review of its RAPs and the proposed process for evaluating renewal of HRI’s License, if necessary.

B. Determination That HRI’s License No. SUA-1508 Has Not Been Effective for Mandatory Five Year Period Triggering License Renewal

With respect to renewal of HRI’s License, it is critical that NRC Staff properly evaluate the status of HRI’s License in light of the recently terminated administrative litigation and during which the Commission, in 2000, decided to de-activate the License. It is HRI’s position that the date on which HRI would be required to file for timely renewal was postponed from the date on which the Commission prohibited HRI’s use of its License until 2 years and 224 days from the date on which NRC Staff decides to “re-activates” its License.

When HRI’s License was issued in 1998, NRC Staff imposed a license condition that required HRI to file for license renewal within five (5) years of its issuance date (January 5, 1998). Under 10 C.F.R. § 2.109(a), “if at least 30 days before the expiration of *an existing license authorizing any activity of a continuing nature*, the licensee files an application for a renewal or for a new license for the activity so authorized, the existing license will not be deemed to have expired until the application has been finally determined.” (emphasis added). Thus, NRC’s regulations contemplate that timely license renewal requires that the license authorize “an activity of a continuing nature.” In the case of HRI’s License, while the license did authorize HRI to conduct licensed ISR operations at its proposed CUP project sites, the Commission’s 2000 decision prohibited HRI from pursuing the licensed “continuing activity” and “de-activated” HRI’s license. Therefore, as of May 25, 2000, HRI’s License timeline for license renewal was stayed pending NRC Staff’s “re-activation” of its License, which will require approximately 2 years and 224 days from “re-activation” of HRI’s License before there is a need for license renewal.

While HRI recognizes that it did indeed file for timely license renewal in 2002, the current license renewal application was submitted by HRI as a protective measure to ensure that no procedural conditions were violated and, thereby, to maintain the integrity of the License. Since NRC Staff did not provide it with any guidance regarding the license renewal process as it related to the administrative litigation after holding license renewal in abeyance, HRI deemed it prudent to file for timely license renewal. Accordingly, it is HRI’s position that NRC Staff merely can inform HRI that its request for timely renewal will be accepted for review when the appropriate five (5) year time period has elapsed.² As stated above, in the event that NRC Staff concurs with this position, HRI will voluntarily withdraw its request for license renewal.

² This response is appropriate under 10 C.F.R. § 2.109(a) because the language of the regulation merely requires that the request for timely renewal be submitted “at least 30 days before the expiration of an existing license authorizing any activity of a continuing nature.”

C. Determination That No Further Information is Required for License Renewal and No Re-Issuance of Public Notice is Required

In the event that NRC Staff does not agree that HRI's License term has not yet expired, HRI asserts that NRC Staff should rescind the decision to hold license renewal in abeyance and to continue with license renewal review without re-publishing HRI's requested renewal for an opportunity for a hearing. At the July 29, 2010 public meeting, NRC Staff indicated that it was considering the possibility of re-issuing notice of HRI's license renewal request with a new notice of opportunity for a hearing. HRI believes that this action is unnecessary given the Commission's regulations for late intervention and would be arbitrary, capricious, and unjustly prejudicial to HRI's licensed status in view of the unreasonably extended administrative litigation process and NRC Staff's decision to hold HRI's 2002 license renewal application pending a conclusion to the aforementioned administration litigation. NRC Staff should not now ignore the Commission's procedures for late filing to the detriment of HRI.

At 10 C.F.R. Part 2, the Commission expressly contemplates scenarios where interested stakeholders could petition for intervention regarding proposed licensing actions such as license renewals. 10 C.F.R. § 2.309(c) specifically sets forth the requirements for "non-timely filings" (or late intervention):

(c) *Nontimely filings.* (1) Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the request and/or petition and contentions that the request and/or petition should be granted and/or the contentions should be admitted based upon a balancing of the following factors to the extent that they apply to the particular nontimely filing:

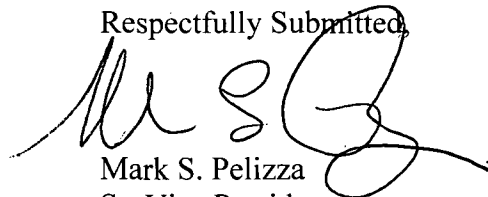
- (i) Good cause, if any, for the failure to file on time;
- (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
- (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;
- (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
- (vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;
- (vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and

(viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.”

These “nontimely filing” regulations were specifically developed to accord parties seeking to intervene late an opportunity to request an administrative hearing but to avoid penalizing an applicant that followed the Commission’s requirements for timely filings. In the instant case, HRI’s License was “de-activated” by the Commission (CLI-00-08) and the Licensing Board (LBP-04-03) and stayed its renewal date for 2 years and 224 days after re-activation. In any event and as noted above, HRI protectively filed for timely license renewal within the parameters of 10 C.F.R. § 2.109(a), NRC Staff issued a Federal Register notice informing members of the public, interested stakeholders, and Intervenor’s of the receipt and docketing of HRI’s filing within the parameters of 10 C.F.R. §§ 2.2.104 and 2.309(b)(3), and no requests for a hearing were filed by any party(ies). To re-issue HRI request for timely license renewal and a new notice of opportunity for a hearing over eight (8) years after the renewal was published in the Federal Register would ignore the Commission’s express procedures for “nontimely filings” and would unfairly penalize HRI for doing nothing more than following the Commission’s decisions and regulations. Thus, HRI asserts that NRC Staff should not accord previous Intervenor’s or any other party the opportunity to petition for intervention through a *timely* filing and should not re-issue the notice of HRI’s requested license renewal with a new notice of opportunity for a hearing.

HRI appreciates the opportunity to proceed with re-activation and, if necessary, renewal of its License and to work with NRC Staff on each of these items. HRI has completed the NRC administrative litigation and review thereof at all levels of the federal judicial system; so it is interested in moving forward with the construction and operation of its proposed CUP ISR project. Given that it is the beginning of calendar year 2011, HRI requires information regarding the status and review process of its requests so that appropriate resources can be allocated. Thus, HRI respectfully requests a response to this letter no later than February 15, 2011. Thank you for time and consideration in this matter and I look forward to your response.

Respectfully Submitted,



Mark S. Pelizza
Sr. Vice President
Health, Environment and Public Affairs