

May 21, 1999

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'99 MAY 24 P2:57

BEFORE THE COMMISSION

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

In the Matter of:)
)
)

HYDRO RESOURCES, INC.)
2929 Coors Road, Suite 101)
Albuquerque, NM 87120)
_____)

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

**HYDRO RESOURCES, INC.'S OPPOSITION
TO INTERVENORS' PETITION FOR INTERLOCUTORY REVIEW OF PRESIDING
OFFICER'S APRIL 21, 1999 AND MAY 4, 1999 ORDERS REQUESTING THAT THE
STAFF RESPOND TO ENUMERATED QUESTIONS**

INTRODUCTION

Hydro Resources, Inc. ("HRI") respectfully opposes the May 14, 1999 petition filed on behalf of Eastern Navajo Dine Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC") (hereinafter, jointly, "Intervenors") requesting that the Commission reverse the Presiding Officer's Orders of April 21, 1999 and May 4, 1999, stay those Orders pending review and strike material submitted pursuant to those Orders. Intervenors have failed to show that interlocutory review is appropriate and, consequently, Intervenors' petition should be denied.

ARGUMENT

The Commission and all parties have been through precisely this drill at least once before. In its Memorandum and Order dated March 23, 1999 (CLI-99-07), the Commission considered Intervenors' petition for interlocutory review of the Presiding Officer's Memorandum

U.S. NUCLEAR REGULATORY COMMISSION
RULEMAKING & ADJUDICATIONS STAFF
OFFICE OF THE SECRETARY
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and Order of March 3, 1999 posing questions to the parties regarding HRI's technical qualifications. In denying Intervenors' earlier petition, the Commission stated:

In determining whether to grant a petition for interlocutory review, the Commission considers whether the Presiding Officer's action either (1) threatens the party adversely affected with immediate and serious irreparable harm that could not be remedied by a later appeal or (2) affects the basic structure of the proceeding in a pervasive or unusual manner. 10 C.F.R. §2.786(g)(1) & (2) (other citations omitted).

Memorandum and Order, March 23, 1999 (CLI-99-07), 1-2. Declaring that

the Commission does not agree with the Intervenors that the Presiding Officer's order has altered the basic structure of the proceeding . . . we fail to see any irreparable harm that would befall the intervenors should they be required to wait and raise their concerns on a later petition for review from an adverse merits decision

(*id.* at 2), the Commission denied Intervenors' request for interlocutory review of the Presiding Officer's Memorandum and Order requesting additional information of the parties.

Intervenors' Petition presently before the Commission is, procedurally and practically, identical to Intervenors' petition previously rejected by the Commission at CLI-99-07.

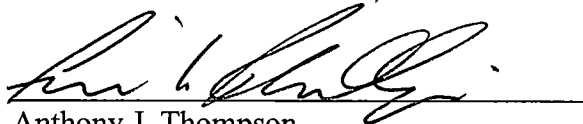
Intervenors' pending Petition seeks interlocutory review on the grounds that the Presiding Officer's April 21, 1999 and May 4, 1999 Orders "will affect the basic structure of the proceeding in a pervasive or unusual manner." Intervenors' Petition at 3. In support of their claim, Intervenors offer conclusory statements, at pages 4, 7, and 10, that the Presiding Officer's request for additional information affects the basic structure of the proceeding in a pervasive and unusual manner. As with Intervenors' prior request for interlocutory review denied by the Commission at CLI-99-07, however, Intervenors fail to explain how the basic structure of the proceeding has been altered. Likewise, as was true of Intervenors' prior petition, Intervenors

will suffer no irreparable harm if they are denied interlocutory review and required to await their opportunity to appeal any adverse ruling on the merits.

CONCLUSION

Intervenors' Petition fails to satisfy the standard for obtaining interlocutory review and granting such review can only serve to further prolong these already lengthy proceedings. Consequently, and for the reasons set forth above and in the Commission's opinion CLI-99-07 and HRI's and Staff's briefs submitted in connection therewith, HRI respectfully requests that Intervenors' Petition for Interlocutory Review be DENIED.

Respectfully submitted this 21 day of May, 1999.



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing documents, HYDRO RESOURCES, INC.'S OPPOSITION TO INTERVENORS' PETITION FOR INTERLOCUTORY REVIEW OF PRESIDING OFFICER'S APRIL 21, 1999 AND MAY 4, 1999 ORDERS REQUESTING THAT THE STAFF RESPOND TO ENUMERATED QUESTIONS, in the above-captioned proceeding were sent to the following overnight mail on this 21st day of May, 1999.

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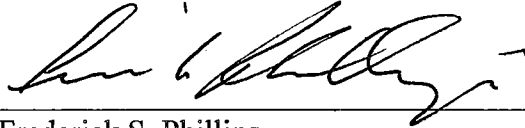
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