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March 30, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'99 APR -5 P2:55

Before Administrative Judge Peter B. Bloch

OFFICE OF SECRETARY
REGULATORY 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

**MARILYN MORRIS AND GRACE SAM'S MOTION TO STRIKE HYDRO
RESOURCES, INC'S RESPONSE TO THE FINAL WRITTEN PRESENTATION OF
GRACE SAM AND MARILYN MORRIS**

Intervenors Marilyn Morris and Grace Sam hereby move to strike Hydro Resources, Inc's Response to the Final Written Presentation of Grace Sam and Marilyn Morris (HRI's Response). HRI's Response was served five days past the filing deadline, in violation of the Presiding Officer's Memorandum and Order (Scheduling and Partial Grant of Motion for Bifurcation) (September 22, 1998) (hereinafter September 22 order).

FACTS

On February 19, 1999, Marilyn Morris and Grace Sam filed the Final Written Presentation of Grace Sam and Marilyn Morris in accordance with the September 22 order as modified by the Commission in CLI-99-03 (February 11, 1999). On February 19, 1999 Intervenor's Presentations were served via electronic mail and priority mail to all parties on the HRI service list and to the Secretary's office. The Final Written Presentation was received and docketed by the Secretary's office on Monday, February 22, 1999.

Under the September 22 order "HRI shall respond to written presentations within 30 days from when they actually receive the presentation."(September 22 order at 4.) Upon information

U.S. SECURITIES AND EXCHANGE COMMISSION
FEDERAL BUREAU OF INVESTIGATION
OFFICE OF THE SECRETARY
OF THE COMMISSION

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and belief, HRI actually received the presentation via priority mail in Washington, D.C. on Monday, February 22, 1999, the same day that the presentation was received by the Secretary's office. To be in compliance with the September 22 order, HRI should have filed their response to Marilyn Morris and Grace Sam's written presentation on Wednesday, March 24, 1999. HRI did not file its response until Monday, March 29, 1999, five days late. Counsel for Marilyn Morris and Grace Sam were never contacted regarding an extension of this deadline and no motion to extend HRI's deadline to respond was ever filed. After receiving HRI's response via E-mail, counsel for Marilyn Morris and Grace Sam attempted to contact counsel for HRI on March 30, 1999 to inquire about the late filing, but neither Frederick Phillips nor David Lashway were available to comment.

ARGUMENT

This Motion to Strike should be granted because HRI's late filing of its response violates the September 22 order, is against the Commission's directive to adhere to deadlines in this and any proceeding, and is even contrary to HRI's own earlier stated position regarding the adherence to the filing schedule in this proceeding.

The extension and adherence to deadlines in this matter has been at issue before. In fact, Intervenors Marilyn Morris and Grace Sam themselves were granted an extension of their deadline for their second written presentation (extension granted from December 7 to December 11, 1999) and most recently the NRC staff has been granted an extension on its response to the written presentations on groundwater (Memorandum and Order, February 12, 1999, granting extension of deadline until March 12, 1999). However, all deadline extensions have been made after conferring with all other parties and through written motion to the presiding officer showing

good cause for the request of a deadline extension. HRI is the first party to completely miss a deadline on its filings without showing good cause to either the parties or the presiding officer.

Such a failure to miss a deadline should not be taken lightly. First and foremost, adherence to deadlines has been required by the presiding officer through his September 30 order. This order makes it very clear that HRI shall respond to written presentations within 30 days from when they receive the presentation. Nonadherence to this deadline is plain and simply a violation of this order and thus HRI's late response must be stricken.

Second, the Commission has specifically confirmed in this case that deadlines must be adhered to. In CLI-99-1 (January 29, 1999) (vacating the Presiding Officer's extension of a deadline for intervenor's final briefs from February 1 until March 5) the Commission expressed its fear "that an accumulation of seemingly benign deadline extensions will in the end substantially delay the outcome of the case" (CLI-99-1 at 3). Thus, HRI's late filing not only violates the Presiding Officer's September 22 order but also violates the directive of the Commission in adhering to deadlines.

Finally, HRI itself, if it remained consistent with its earlier position, would object to a late filing or extension of a deadline by anyone. HRI has put forth that "every delay, even for a few weeks, inures to HRI's detriment," and that "every day that this license challenge drags on makes this task increasingly difficult and expensive." (Hydro Resources, Inc.'s Motion for Reconsideration of the Presiding Officer's Order Extending the Filing Deadline for Intervenors' Final Brief to March 5, 1999, January 25, 1999 at 3 and 4.) Thus filing its response late, in violation of the Scheduling Order, reveals an inconsistency within HRI's position and shows not only a failure to obey the September 22 order but shows it was disingenuous with its earlier


arguments.

CONCLUSION

Because of the foregoing reasons, Intervenor respectfully request that the Presiding Officer strike Hydro Resources, Inc's Response to the Final Written Presentation of Grace Sam and Marilyn Morris from the official record of the proceeding.

Dated March 30, 1999

Respectfully submitted



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

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OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

Before Administrative Judge Peter B. Bloch, Presiding Officer

In the Matter of)
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HYDRO RESOURCES, INC.) Docket No. 40-8968-ML
2929 Coors Road)
Suite 101) ASLBP No. 95-706-01-ML
Albuquerque, NM 87120)
)

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 1999, I caused to be served copies of the following:

MARILYN MORRIS AND GRACE SAM'S MOTION TO STRIKE HYDRO RESOURCES, INC'S RESPONSE TO THE FINAL WRITTEN PRESENTATION OF GRACE SAM AND MARILYN MORRIS

upon the following persons by U.S. mail, first class, and in accordance with the requirements of 10 C.F.R. § 2.712. The parties marked by an asterisk (*) were also served by e-mail. The envelopes were addressed as follows:

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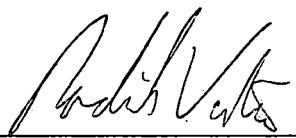
Dated this 30th day of March, 1999

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