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March 3, 1999

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

Before Administrative Judges:
Peter B. Bloch, Presiding Officer
Thomas D. Murphy, Special Assistant

SERVED MAR - 3 1999

In the matter of

HYDRO RESOURCES, INC.
(2929 Coors Road
Suite 101
Albuquerque, New Mexico 87120)

Docket No. 40-8968-ML

Re: Leach Mining
and Milling License

ASLBP No. 95-706-01-ML

MEMORANDUM AND ORDER
(Questions Concerning the Technical Qualification Issue)

MEMORANDUM

This Memorandum was prepared after analyzing Eastern Navajo Diné Against Uranium Mining (ENDAUM) and Southwest Research and Information Center (SRIC) (collectively, "Intervenors") joint written presentation (10 C.F.R. § 2.1233.) on the technical qualification issue and the responses filed by Hydro Resources, Inc. (HRI) and the Staff of the Nuclear Regulatory Commission (Staff).¹

¹Eastern Navajo Diné Against Uranium Mining And Southwest Research and Information Center's Brief In Opposition To Hydro Resources, Inc.' Application For A Materials License With Respect To: Hydro Resources, Inc.'s Lack Of Technical And Financial Qualifications, dated January 11, 1999 (Intervenors Qualifications Brief). Staff's Response to Intervenors' Presentations on Technical Qualification, Financial and Decommissioning Issues, dated February 18, 1999 (Staff Qualifications Brief). HRI Response to Intervenors' Briefs With Respect to Hydro Resources, Inc.'s Technical and Financial Qualifications, etc., dated February 11, 1999 (HRI Qualifications Brief).

Intervenors Brief, at page 14, argues that:

In accordance with 10 C.F.R. § 40.32(b), the NRC is required to determine that an applicant for a license is qualified to conduct the proposed project, not that the applicant will become qualified at some point in the future.

This argument is supported by 10 C.F.R. § 40.32(b), which requires a finding that "The Applicant *is* qualified by reason of training and experience" Emphasis added.

The Staff Brief responds, at p. 11, that the Staff made a general finding in the Safety Evaluation Report, December 4, 1998, #9712310295 971204 (SER) which states, at p. 34, that the requirements of 10 C.F.R. § 40.32 have been met. *See also* SER at 3-7 (reviewing the HRI management organization and administrative procedures but omitting any finding about its technical qualification).

In the HRI Brief, at p. 11, HRI anticipates that the Presiding Officer might need to find that it *is* qualified. To demonstrate its qualification, HRI cites COP Rev 2.0 at 128. However, the HRI Qualifications Brief does not present any analysis of why HRI should be considered to be technically qualified. *See Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-97-14, 46 NRC 287, 303-308 (1997)(Commission makes findings supporting the conclusion that applicant "appears to be financially qualified" under 10 C.F.R. § 70.23(a)(5)).

Accordingly, pursuant to 10 C.F.R. § 2.1233 (a), the parties shall answer the following questions in writing, in compliance with the requirements for written presentations set forth in 10 C.F.R. § 2.1233 (d):

1. What is the factual basis for finding that HRI is qualified for licensing by reason of training and experience.

2. To what extent, if any, is the financial condition of HRI relevant to a determination that it is qualified by reason of training and experience.

3. To what extent, if any, is the Texas investigation and allegations referenced by Intervenors relevant to a determination that HRI is qualified for licensing by reason of training and experience? *See Intervenors Brief at Attachment 3.*

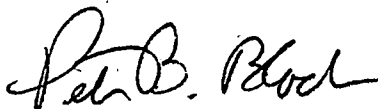
ORDER

For all the foregoing reasons and upon consideration of the entire record in this matter, it is this 3rd day of March, 1999, ORDERED, that:

1. The parties shall answer the three numbered questions set forth above.

2. Hydro Resources, Inc. (HRI) may file its answers so that they are received 12 days from the issuance of this Memorandum and Order.² The Staff of the Nuclear Regulatory Commission may file simultaneously with HRI. SRIC and ENDAUM may then respond within 12 days from their *receipt* of the last of these filings.³

3. This is an interim decision and is not ordinarily reviewable.



Peter B. Bloch, Administrative Judge
Presiding Officer

Rockville, Maryland

²When filing deadlines occur on a non-business day, the filing is due on the next business day.

³The date of receipt shall be considered to be the last date of receipt by an Intervenor included on the service list. Note that by posing these questions, the Presiding Officer *grants in part* relief requested in Intervenors Motion to Reply on this issue, February 26, 1999.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (...TECH. QUAL. ISSUE) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Dated at Rockville, Md. this
3 day of March 1999


Office of the Secretary of the Commission