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

OFFICE OF THE SECRETARY
OF REGULATORY AFFAIRS
AND
PANEL OPERATIONS STAFF

Before Chief Administrative Judge
B. Paul Cotter, Jr., Presiding Officer

Administrative Judge
Thomas D. Murphy, Special Assistant

SERVED FEB - 9 1998

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

February 9, 1998

MEMORANDUM AND ORDER

(Denying Petition to Intervene
and Setting Schedules)

On January 28, 1998, papers entitled "Red Devil's Petition for Leave to Intervene" with an attached "Affidavit", two documents hand lettered as Exhibits 1 and 2, and a paper entitled "The Red Devil's Entry of Appearance" were received by the Presiding Officer in this 10 C.F.R. Part 2, Subpart L proceeding concerning an application for a license to conduct *in situ* leachate mining of uranium in New Mexico. No certificate of service was attached. The papers were filed by one Mervyn Tilden whose

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petition to intervene is pending in this proceeding. It does not appear that all parties were served.

These papers, set out in the form of pleadings in Nuclear Regulatory Commission administrative proceedings, are filled with language which, on its face, is intended to mock and excoriate this proceeding. Such language includes phrases in the "Entry of Appearance" such as "racist Rules and Regulations of the...NRC...," and "...this ignominious, satanic mockery of justice. Hallelujah Amerika!." Language in the "Petition to Intervene" includes the following

The consistent irregularities, treasonous disregard, and perfidious manipulation of the "NRC Rules and Regulations" by the NRC itself and the lack of key and important documents which is public information cannot explain the over abundance of meaningless, useless, abject, and long-winded propoganda in this dark and shameful proceeding. This clearly seizes the title of the "Father of Lies."

The foregoing "Petition" consists largely of: (1) a diatribe against the United States government and its agencies concerning their dealings with native Americans such as the Navajo; and (2) the perceived inequity of permitting a filing by another group of Navajo who seek to intervene in support of the mining license application.

The "Affidavit" asserts, *inter alia*,

...i [sic] acknowledge this disreputable and wandering proceeding by submitting *my lack* of credentials, bogus degrees, and callous certifications;....

(Emphasis in original). This paper concludes with a mock notarization.

Section 2.713 of the Commission's rules of practice governs appearance and practice before the Commission in adjudicatory proceedings. It provides in pertinent part

(a)...In the exercise of their function under this subpart, the Commission...function[s] in a quasijudicial capacity. Accordingly, parties and their representatives in proceedings subject to this subpart are expected to conduct themselves with honor, dignity, and decorum as they should before a court of law.

...

(c) *Reprimand, censure or suspension from the proceeding.* (1) A presiding officer... may, if necessary for the orderly conduct of a proceeding, reprimand, censure or suspend from participation in the particular proceeding pending before it any party or representative of a party who shall...be guilty of...disruptive or contemptuous conduct.

10 C.F.R. § 2.713 (1997).

The Commission has expressed its lack of tolerance for "intemperate, even disrespectful rhetoric" on the part of attorneys on more than one occasion. *Curators of the University of Missouri*, CLI-95-17, 42 NRC 229, 232-233,

fn. 1 (1995), citing, *inter alia*, *Northern Indiana Public Service Co.* (Bailly Generating Station, Nuclear-1), ALAB-204, 7 AEC 835, 838 (1974).¹ By the terms of Section 2.713(a), the Commission's lack of tolerance for such conduct by attorneys applies equally to parties. Petitioners to become parties to our proceedings such as Mr. Tilden are subject to the same requirements in their pleadings before us.

The foregoing documents are frivolous on their face and shall be stricken from the record. The language of the petition belittling the proceeding indicates that, in addition to being contemptuous, the filer's purpose is to be disruptive. They demonstrate a total disregard for the adjudicatory process itself, as well as the time and resources of all those seeking to intervene in this proceeding who would be required to respond to these papers

¹That case quoted from the American Bar Association's Canons of Ethics that "Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system" [Footnote omitted]. The Appeal Board noted that "Name calling adds nothing to the stature of counsel or to the merits of his argument." *Id.*

were it not for the Presiding Officer's action herein in dismissing them *ab initio*.²

In short, the papers serve solely as a vehicle for indulging in puerile anti-government and anti-NRC rhetoric. Frivolous, disruptive, and contemptuous pleadings can not and will not be entertained by the Commission.

In the instant case, some allowance will be made for the fact that Mr. Tilden is a first time, *pro se* petitioner. Accordingly, no disciplinary action will be taken beyond striking the papers in question. Pursuant to 10 C.F.R. § 2.1209 (1997), this order is being issued without awaiting responses from the parties to avoid delay and maintain order in the proceeding.

²Were these filings legitimate they would fail on the merits because they make no attempt to address the factors in 10 C.F.R. § 2.1205 for intervention and late intervention, they fail to list any areas of interest in the proceeding, and they fail to identify any disagreement with the Hydro Resources license application. In addition, it is clear that the "petitioner's" participation in this proceeding would not contribute toward the resolution of any meaningful issues.

NRC Staff Request for
Extension of Time

On February 2, 1998 the Presiding Officer granted a request for an extension of time submitted by the Applicant (HRI) to file its responses to petitions for hearing in this proceeding. Subsequently, and because of the grant of the Applicant's request for an extension of time, the NRC Staff submitted a "Request for Clarification and for Extension of Time" dated February 4, 1998. The Staff filing seeks clarification of two procedural matters. First, it desires to know when it must file its response to the Mervyn Tilden petition dated January 16, 1998, and second, it desires to know whether it needs to respond to all the hearing petitions filed in this proceeding since its inception, and not just those "amended hearing requests" filed by ENDAUM and SRIC and the Tilden petition. The Staff's Request further seeks an extension of time to file responses to all hearing petitions until March 6, 1998, and further seeks the Presiding Officer's aid in directing the parties to serve all filings on the other potential parties to this proceeding.

In the interest of an orderly completion of the petition and response phase of this proceeding, the Staff's motion for an extension of time is granted. The Staff may respond to the original and amended petitions as it sees fit. It would be helpful to the Presiding Officer if the Staff responded to all points in both the original and amended petitions to the extent they are not duplicative. In the interest of efficiency, Staff's response to two petitions (where there are two by any one party) could be consolidated, rather than responding to each separately.

ORDER

For all the foregoing reasons and based on the entire record in this matter, it is, this 9th day of February, 1998

ORDERED

1. That pursuant to the powers granted the Presiding Officer by 10 C.F.R. § 2.1209 (1997), "The Red Devil's Petition for Leave to Intervene" and Affidavit should be, and it hereby is, denied and the filings shall be stricken from the record;

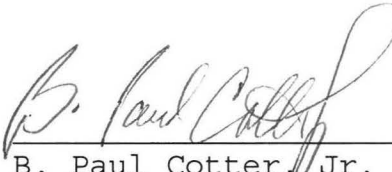
2. That the Staff shall have until close of business on March 6, 1998 to file its responses to petitions for hearing and amended petitions for hearing submitted in this proceeding, inclusive of the Tilden petition;

3. That from this date forward, all filings in this proceeding shall conform to the service requirements found in 10 C.F.R. §§ 2.712, 2.730, and 2.1203 (1997). Those requirements include serving all persons noted on the service list attached to this Order. Filings not conforming with such requirements will be returned, will not be entertained by the Presiding Officer, and will not become part of the official record of the proceeding.

4. That the portion of this order rejecting "The Red Devil's Petition for Leave to Intervene" is effective immediately and, absent appeal and pursuant to 10 C.F.R. § 2.1251(a) (1997), will become the final order of the Commission thirty (30) days after the date of issuance.

5. That this Order is appealable to the Commission in accordance with the provisions of 10 C.F.R. § 2.1205(o). Any appeal must be filed within ten (10) days of service of this Order and may be taken by filing and serving upon all

parties a statement that succinctly sets out, with supporting argument, the errors alleged. Any other party may support or oppose the appeal by filing a counter-statement within fifteen (15) days of the service of the appeal brief.



B. Paul Cotter, Jr.
ADMINISTRATIVE JUDGE

Rockville, Maryland

February 9, 1998

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
HYDRO RESOURCES, INC.

Docket No.(s) 40-8968-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O DENY'G PET. - LBP-98-4 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
9 day of February 1998

Adria T. Byrdson
Office of the Secretary of the Commission