

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

DOCKETED 3/23/99

Shirley Ann Jackson, Chairman
Greta J. Dicus
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

SERVED 3/23/99

Docket No. 40-8968-ML

In the Matter of)
)
HYDRO RESOURCES, INC.)
)
(2929 Coors Road Suite 101,)
Albuquerque, NM 87120))
_____)

CLI-99-07

MEMORANDUM AND ORDER

On March 12, 1999, Intervenor Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and Southwest Research and Information Center ("SRIC") filed a petition for the Commission's interlocutory review of the Presiding Officer's Memorandum and Order (Procedural Issues) issued on March 3, 1999, and reaffirmed on March 9 when he declined to reconsider it. In particular, the Presiding Officer's order posed three questions to the parties related to the technical qualifications of Hydro Resources, Inc. (HRI). The Intervenor seeks reversal of the March 3 order because, in their view, the Presiding Officer has inappropriately provided HRI and the Staff with a second opportunity to address issues that these parties had failed to address earlier.

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); see Georgia Power Company (Vogtle Electric Generating Plant, Units 1 and 2) CLI-94-15, 40 NRC 319 (1994); Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-94-2, 39 NRC 91, 93 (1994). In their petitions, the Intervenor has failed to show that either of these factors has been met. In particular, the Commission does not agree with the Intervenor that the Presiding Officer's order has altered the basic structure of the proceeding. Likewise, 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.

In this proceeding, the Commission has issued sua sponte direction when it has determined that the Presiding Officer granted an unwarranted deadline extension. Hydro Resources, Inc., CLI-99-1, 49 NRC 1 (1999). However, since the propriety of the Presiding Officer's inquiry in this instance turns on fact-specific questions, we see no reason to interfere in the proceeding at this time, especially where such interference is likely to cause delay while we consider the merits on appeal. If, in the end, Intervenor is prejudiced by information that enters the record as a result of the Presiding Officer's questions, they will be free later to bring their grievance to the Commission.

Intervenor also sought a stay of the Presiding Officer's March 3 and March 9 orders pending disposition of the petition for review. In view of our denial of the petition, the stay request is moot.

For the foregoing reasons, the petition is denied.

IT IS SO ORDERED.

For the Commission

[Signed by Annette L. Vietti-Cook]

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 23rd day of March, 1999.