

May 25, 2000

MEMORANDUM William D. Travers

FOR: Executive Director for Operations

John F. Cordes, Director
Office of Commission Appellate Adjudication

FROM: Annette Vietti-Cook, Secretary /RA/

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 1:30 P.M., THURSDAY, MAY 25, 2000, COMMISSIONERS'
CONFERENCE ROOM, ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)⁽¹⁾

I. SECY-99-0282 - Hydro Resources, Inc., Docket No. 40-8968-ML, Memorandum and Order (Financial Assurance for Decommissioning Issues), LBP-99-13, 49 NRC 233 (March 9, 1999); and Memorandum and Order (Motion to Hold in Abeyance), LBP-99-40 (October 19, 1999)

The Commission approved a Memorandum and Order related to an informal adjudicatory proceeding concerning a Part 40 source and byproduct materials license authorizing Hydro Resources, Inc. (HRI) to construct and operate in situ leach (ISL) mining facilities for a five-year period (1998-2003) at certain sites in Church Rock and Crownpoint, New Mexico, after meeting certain license conditions. The Eastern Navajo Diné Against Uranium Mining (ENDAUM), the Southwest Research and Information Center (SRIC), Marilyn Morris, and Grace Sam (intervenors) oppose the grant of HRI's license.

The Memorandum and Order 1) modifies the ruling in LBP-99-13 regarding financial assurance, places a condition on the license issued to HRI, and remands the case to the Presiding Officer for further proceedings; 2) grants HRI's September 3rd Motion to Strike; 3) denies as moot HRI's September 14th Motion to Strike; 4) denies HRI's September 14th Motion for Sanctions; and 5) denies intervenors' request for oral argument.

(Subsequently, on May 25, 2000, the Secretary signed the Memorandum and Order.)

II. SECY-00-0080 - Final Rule:"Elimination of the Requirement for Noncombustible Fire Barrier Penetration Seal Materials and Other Minor Changes" (10 CFR Part 50)

The Commission approved a final rule amending [10 CFR 50.48](#) and [10 CFR Part 50, Appendix R](#), to eliminate the noncombustibility requirement for fire barrier penetration seal materials and making other minor changes. The Commission approved the publication and implementation of this final rule, subject to the attached changes.

Following incorporation of these changes, the Federal Register notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO)

(SECY Suspense: 6/23/00)

The staff should reflect the rule changes in the Standard Review Plan Section 9.5.1, "Fire Protection Program," and in the draft Regulatory Guide DG-1094, "Fire Protection for Operating Nuclear Power Plants," as part of the next regularly scheduled update.

Attachment: As stated

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
EDO
OGC
CIO
CFO
OCAA
OCA
OIG
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR - Advance

Edits/Changes to Federal Register Notice

1. In order to communicate to the public the fact that safety was the primary consideration in the decision, the staff should revise the language used in the Federal Register Notice. The revised language should recognize that elimination of the requirement for fire barrier penetration seal materials to be noncombustible removes a requirement that has a negligible contribution to safety, rather than "does not make a significant contribution to safety."
2. The staff should rewrite the NRC responses to comments 2, 3, and 5 in the Federal Register Notice. The comments pertain broadly to the use of combustible fire seal material. Yet, the responses are narrowly written to address silicone-based fire barrier penetration seals. In SECY-96-146, "Technical Assessment of Fire Barrier Penetration Seals in Nuclear Power Plants," the staff revealed that while silicone-based materials are the predominant penetration seal materials, there are seals that are not silicone-based. Therefore, the staff's responses should be more broadly written to address, in a more complete manner, the full scope of the comments.
3. Section III (Summary of Changes) of the Federal Register Notice, page 10, indicates that in NUREG-1552 and NUREG-1552, Supplement 1, the NRC concluded that "the benefits of the silicone-based penetration seal materials outweigh any potential concerns regarding material combustibility." Yet, the staff does not indicate what those benefits are. The Federal Register Notice should be revised to include a more complete discussion of the benefits so that they are more readily understood by NRC stakeholders.
4. Page 2, first full paragraph, last sentence: add a comma after "This section addresses all comments,".
5. Page 2, third full paragraph: use small capitalization for first word after each item number.
6. Page 4, third paragraph: line 4 - delete "same" before "fire area"; line 6 - revise the spelling of "judgement" to "judgment".
7. Page 4, last paragraph, line 12: replace "Furthermore," with "Finally,".
8. Page 5, second full paragraph: revise second sentence to read "A properly designed, tested, and installed penetration seal will stop the fire for the rated time period, the same period as the rated-fire wall/ceiling/floor assembly in which it is installed."
9. Page 5, last paragraph, line 8: replace ".....," with "fire barrier penetration seals,".
10. Page 5, last paragraph, line 13: replace "they" with "such standards".
11. Page 6, line 6: revise sentence to read "Subsequently, the industry used this guidance in inspecting plant designs."
12. Page 6, second full paragraph, lines 2 & 3: replace ", such" with "and" and insert "as a result," before "the Appendix R ...".
13. Page 10, first item (3): add a comma after "... will provide the fire resistance of the tested design," .
14. Page 10, after first item (3): insert a space to separate the paragraph that follows.
15. Page 10, second item (1): correct the format - change "1." to "(1)".
16. Page 11, first full paragraph, line 10: add a comma after "3 and 4".
17. Page 11, first full paragraph: insert a space between paragraphs.
18. Page 12, first line: move the footnote number to the right of the period.
19. Page 20: correct the section number for the section describing the changes to Appendix R from "5." to "3."

1. Section 201 of the Energy Reorganization Act, 42 U.S.C. Section 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Dicus was not present when these items were affirmed. Accordingly the formal vote of the Commission was 4-0 in favor of these decisions. Commissioner Dicus, however, had previously indicated that she would approve these papers and had she been present she would have affirmed her prior votes.