



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

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OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

MEMORANDUM TO: Presiding Officer and Participants
Hydro Resources, Inc.
Docket Number 40-8968-ML

SERVED MAR - 5 1998

SUBJECT: COMPLIANCE WITH THE SERVICE REQUIREMENTS
OF 10 CFR PART 2 AND THE PRESIDING OFFICER'S
ORDER OF FEBRUARY 9, 1998 (LBP-98-4)

On February 23, 1998, Mr. Mervyn Tilden contacted me from the lobby of our Headquarter's building in Rockville, Maryland. He provided a letter on behalf of the Citizens for Clean Land, Air and Water (CCLAW) which described the organization and enclosed several documents described therein. Mr. Tilden represented to me that CCLAW may file an intervention petition at a later date. Mr. Tilden also represented that he had experienced problems in the service of documents but planned to resolve the problems. Because several parties and the Office of the Secretary had received returned mail addressed to Grace and Marilyn Sam, I indicated to Mr. Tilden that I was in search of a participant that would be willing to accept service on behalf of the Sams. Mr. Tilden, who lives not far from the Sams, volunteered to accept service. I indicated that the Sams would have to approve any arrangement that allowed him to accept service on their behalf. I advised that I would explore his offer as a possible solution to the problem of serving the Sams.

Mr. Tilden's service problems came to the foreground recently, when I learned from NRC staff counsel that two documents faxed by Mr. Tilden to the Office of the Secretary and the Presiding Officer (followed by paper copies) were not served on staff counsel. In his order of February 9, 1998 (LBP-98-4), the Presiding Officer emphasized that from the date of the Order forward, service by participants must conform to the service requirements of 10 CFR Part 2. Filings that did not conform to those requirements would be returned and would not become a part of the official record of the proceeding. LBP-98-4, (Slip. op. at 8). As required by that Order, I am returning to Mr. Tilden four documents sent by him to the Office of the Secretary. The documents do not have attached certificates of service and it is difficult to ascertain whether all proceeding participants (as listed on the official service list attached to all orders of the Presiding Officer) were served. The four documents being returned are:


1. Petitioner Mervyn Tilden's Notice of Submission of Third Amended Petition to Intervene, Statement of concerns, Position Statement, and Request for A Temporary Restraining Order (TRO), dated February 20, 1998

2. Petitioner Mervyn Tilden's Opposition to, and, Petition to Deny, The Eastern Navajo Allottee's Association's Petition for Leave to Intervene and Motion to Deny Attorneys entry of Appearance and, Second Request For a Temporary Restraining Order, dated February 20, 1998
3. Memorandum for the Record to All parties from Mervyn Tilden, dated February 20, 1998
4. Letter to Emile Julian with enclosures submitted on behalf of the Citizens for Clean Land, Air, and Water, dated February 23, 1998

Should Mr. Tilden wish to resubmit them he must comply with the requirements of LBP-98-4, and the service rules cited therein.

Although Mr. Tilden's offer to accept service for the Sams is appreciated, under NRC rules, the onus is upon a petitioner to provide an address that the Secretary, the Presiding Officer, parties and participants can rely on in effectuating service on that petitioner. Thus, only the Sams can provide the proper means or proper authorization for receipt of documents served. See 10 CFR §2.712(b).

In an effort to assist participants that may not have ready access to the 10 CFR Part 2 rules of procedures, I am attaching for guidance Parts 2.712, 2.730 and 2.1203 cited in LBP-98-4.



Emile L. Julian
Assistant for Rulemakings
and Adjudications

Attachments: As stated

(c) The original of each document shall be signed in ink by the party or his authorized representative, or by an attorney having authority with respect to it. The capacity of the person signing, his address, and the date shall be stated. The signature of a person signing in a representative capacity is a representation that the document has been subscribed in the capacity specified with full authority, that he has read it and knows the contents, that to the best of his knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay. If a document is not signed, or is signed with intent to defeat the purpose of this section, it may be stricken.

(d) Except as otherwise provided by this part or by order, a pleading (or other document) other than correspondence shall be filed in an original and two conformed copies.

(e) The first document filed by any person in a proceeding shall designate the name and address of a person on whom service may be made.

(f) A document filed by telegraph need not comply with the formal requirements of paragraphs (b), (c), and (d) of this section if an original and copies otherwise complying with all of the requirements of this section are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Docketing and Service Section.

[27 FR 377, Jan. 13, 1962, as amended at 28 FR 10153, Sept. 17, 1963; 33 FR 6708, May 5, 1968; 39 FR 35332, Oct. 1, 1974; 45 FR 49537, July 25, 1980]

§ 2.709 Acceptance for filing.

A document which fails to conform to the requirements of § 2.708 may be refused acceptance for filing and may be returned with an indication of the reason for nonacceptance. Any matter so tendered but not accepted for filing shall not be entered on the Commission's docket.

§ 2.710 Computation of time.

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last

day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served upon by mail, five (5) days shall be added to the prescribed period. Only two (2) days shall be added when a document is served by express mail.

[46 FR 58281, Dec. 1, 1981]

§ 2.711 Extension and reduction of time limits.

(a) Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may for good cause be extended or shortened by the Commission or the presiding officer, or by stipulation approved by the Commission or the presiding officer.

(b) In any instance in which this part does not prescribe a time limit for an action to be taken in the proceeding, the Commission or the presiding officer may set a time limit for that action.

[37 FR 15131, July 28, 1972]

§ 2.712 Service of papers, methods, proof.

(a) *Service of papers by the Commission.* Except for subpoenas, the Commission will serve all orders, decisions, notices, and other papers issued by it upon all parties.

(b) *Who may be served.* Any paper required to be served upon a party shall be served upon him or upon the representative designated by him or by law to receive service of papers. When a party has appeared by attorney, service must be made upon the attorney of record.

(c) *How service may be made.* Service may be made by personal delivery, by first class, certified or registered mail including air mail, by telegraph, or as otherwise authorized by law. Where there are numerous parties to a proceeding, the Commission may make

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special provision regarding the service of papers. The presiding officer may require service by express mail upon some or all parties and the presiding officer.

(d) *Service on the Secretary.* (1) All pleadings must be served on the Secretary of the Commission in the same or equivalent manner, i.e., telefax, express mail, personal delivery, or courier, that they are served upon the adjudicatory tribunals and the parties to the proceedings so that the Secretary will receive the pleading at approximately the same time that it is received by the tribunal to which the pleading is directed.

(2) When pleadings are personally delivered to tribunals while they are conducting proceedings outside the Washington, DC area, service on the Secretary may be accomplished by overnight mail.

(3) Service of pre-filed testimony and demonstrative evidence (e.g., maps and other physical exhibits) on the Secretary may be made by first-class mail in all cases.

(4) The addresses for the Secretary are:

(i) First class mail: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

(ii) Express mail: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Docketing and Service Branch.

(iii) Facsimile: (301) 415-1672; (301) 415-2275; and (301) 415-1977 (verification).

(e) *When service complete.* Service upon a party is complete:

(1) By personal delivery, on handing the paper to the individual, or leaving it at his office with his clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place therein or, if the office is closed or the person to be served has no office, leaving it at his usual place of residence with some person of suitable age and discretion then residing there;

(2) By telegraph, when deposited with a telegraph company, properly addressed and with charges prepaid;

(3) By mail, on deposit in the United States mail, properly stamped and addressed; or

(4) When service cannot be effected in a manner provided by paragraphs (d) (1) to (3) inclusive of this section in any other manner authorized by law.

(f) *Proof of service.* Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, and may be made by:

(1) Written acknowledgment of the party served or his counsel;

(2) The certificate of counsel if he has made the service; or

(3) The affidavit of the person making the service.

(g) *Free copying and service.* Except in an antitrust proceeding, in any adjudicatory proceeding on an application for a license or an amendment thereto, the Commission, upon request by a party other than the applicant, will copy and serve without cost to that party that party's testimony (including attachments), proposed findings of fact and conclusions of law, and responses to discovery requests. These documents should be filed with Docketing and Service not less than five days before they are due to be submitted to an adjudicatory board, unless the presiding officer provides otherwise.¹

[27 FR 377, Jan. 13, 1962, as amended at 28 FR 10153, Sept. 17, 1963; 31 FR 4390, Mar. 15, 1966; 45 FR 49537, July 25, 1980; 46 FR 13681, Feb. 24, 1981; 46 FR 58281, Dec. 1, 1981; 54 FR 26731, June 26, 1989; 54 FR 29008, July 11, 1989; 60 FR 24551, May 9, 1995]

§ 2.713 Appearance and practice before the Commission in adjudicatory proceedings.

(a) *Standards of practice.* In the exercise of their functions under this subpart, the Commission, the Atomic Safety and Licensing Boards, and Administrative Law Judges function 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.

¹This paragraph is suspended until further action of the Commission. (See 46 FR 13681, Feb. 24, 1981)

Operations. Upon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source, the presiding officer may require that the staff answer the interrogatories.

(iii) No deposition of a particular named NRC employee or answer to interrogatories by NRC personnel pursuant to paragraphs (h)(2)(i) and (ii) of this section shall be required before the matters in controversy in the proceeding have been identified by order of the Commission or the presiding officer, pursuant to § 2.751a, or after the beginning of the prehearing conference held pursuant to § 2.752 except upon leave of the presiding officer for good cause shown.

(iv) The provisions of § 2.740 (c) and (e) shall apply to interrogatories served pursuant to this paragraph.

(3) Records or documents in the custody of the Commissioners and NRC personnel are available for inspection and copying or photographing pursuant to §§ 2.744 and 2.790.

[27 FR 377, Jan. 13, 1962, as amended at 31 FR 16310, Dec. 21, 1966; 35 FR 19501, Dec. 23, 1970; 37 FR 15132, July 28, 1972; 40 FR 2973, Jan. 17, 1975]

§ 2.721 Atomic safety and licensing boards.

(a) The Commission or the Chairman of the Atomic Safety and Licensing Board Panel may from time to time establish one or more atomic safety and licensing boards, each comprised of three members, one of whom will be qualified in the conduct of administrative proceedings and two of whom shall have such technical or other qualifications as the Commission or the Chairman of the Atomic Safety and Licensing Board Panel deems appropriate to the issues to be decided, to preside in such proceedings for granting, suspending, revoking, or amending licenses or authorizations as the Commission may designate, and to perform such other adjudicatory functions as the Commission deems appropriate. The members of an atomic safety and licensing board

shall be designated from the Atomic Safety and Licensing Board Panel established by the Commission.

(b) The Commission or the Chairman of the Atomic Safety and Licensing Board Panel may designate an alternate qualified in the conduct of administrative proceedings, or an alternate having technical or other qualifications, or both, for an atomic safety and licensing board established pursuant to paragraph (a) of this section. If a member of a board becomes unavailable, the Commission or the Chairman of the Atomic Safety and Licensing Board Panel may constitute the alternate qualified in the conduct of administrative proceedings, or the alternate having technical or other qualifications, as appropriate, as a member of the board by notifying the alternate who will, as of the date of such notification, serve as member of the board. In the event that an alternate is unavailable or no alternates have been designated, and a member of a board becomes unavailable, the Commission or the Chairman of the Atomic Safety and Licensing Board Panel may appoint a member of the Atomic Safety and Licensing Board Panel who is qualified in the conduct of administrative proceedings or a member having technical or other qualifications, as appropriate, as a member of the atomic safety and licensing board by notifying the appointee who will, as of the date of such notification, serve as a member of the Board.

(c) An atomic safety and licensing board shall have the duties and may exercise the powers of a presiding officer as granted by § 2.718 and otherwise in this part. At any time when such a board is in existence but is not actually in session, any powers which could be exercised by a presiding officer or by the Chief Administrative Law Judge may be exercised with respect to such a proceeding by the chairman of the board having jurisdiction over it. Two members of an atomic safety and licensing board constitute a quorum, if one of those members is the member

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qualified in the conduct of administrative proceedings.

[31 FR 12776, Sept. 30, 1966, as amended at 33 FR 8588, June 12, 1968; 34 FR 13361, Aug. 19, 1969; 35 FR 11459, July 17, 1970; 35 FR 19658, Dec. 29, 1970; 37 FR 15132, July 28, 1972; 37 FR 28711, Dec. 29, 1972; 40 FR 51996, Nov. 7, 1975; 48 FR 52285, Nov. 17, 1983; 56 FR 29408, June 27, 1991]

§ 2.722 Special assistants to the presiding officer.

(a) In consultation with the Panel Chairman, the presiding officer may, at his discretion, appoint from the Atomic Safety and Licensing Board Panel established by the Commission, personnel to assist the presiding officer in taking evidence and preparing a suitable record for review. Such appointment may occur at any appropriate time during the proceeding but shall, at the time of the appointment, be subject to the notice and disqualification provisions as described in § 2.704. Such special assistants may function as:

(1) Technical interrogators in their individual fields of expertise. Such interrogators shall be required to study the written testimony and sit with the presiding officer to hear the presentation and cross-examination by the parties of all witnesses on the issues of the interrogators' expertise, taking a leading role in examining such witnesses to ensure that the record is as complete as possible;

(2) Upon consent of all the parties, Special Masters to hear evidentiary presentations by the parties on specific technical matters, and, upon completion of the presentation of evidence, to prepare a report that would become part of the record. Special Masters may rule on evidentiary issues brought before them, in accordance with §§ 2.743 and 2.757. Appeals from such rulings may be taken to the presiding officer in accordance with procedures which shall be established in the presiding officer's order appointing the Special Master. Special Masters' reports are advisory only; the presiding officer shall retain final authority with respect to the issues heard by the Special Master; or

(3) Alternate Atomic Safety and Licensing Board members to sit with the presiding officer, to participate in the

§ 2.730

evidentiary sessions on the issue for which the alternate members were designated by examining witnesses, and to advise the presiding officer of their conclusions through an on-the-record report. This report is advisory only; the presiding officer shall retain final authority on the issue for which the alternate member was designated.

(4) Discovery Master to rule on the matters specified in § 2.1018(a)(2) of this part.

(b) The presiding officer may, as a matter of discretion, informally seek the assistance of Members of the Atomic Safety and Licensing Board Panel to brief the presiding officer on the general technical background of subjects involving complex issues which the presiding officer might otherwise have difficulty in quickly grasping. Such informal briefings shall take place prior to the hearing on the subject involved and shall supplement the reading and study undertaken by the presiding officer. They are not subject to the procedures described in § 2.704.

[45 FR 62028, Sept. 18, 1980, as amended at 54 FR 14944, Apr. 14, 1989]

MOTIONS

§ 2.730 Motions.

(a) *Presentation and disposition.* All motions shall be addressed to the Commission or, when a proceeding is pending before a presiding officer, to the presiding officer. All written motions shall be filed with the Secretary, and served on all parties to the proceeding.

(b) *Form and content.* Unless made orally on the record during a hearing, or the presiding officer directs otherwise, a motion shall be in writing, shall state with particularity the grounds and the relief sought, and shall be accompanied by any affidavits or other evidence relied on, and, as appropriate, a proposed form of order.

(c) *Answers to motions.* Within ten (10) days after service of a written motion, or such other period as the Secretary or the Assistant Secretary or presiding officer may prescribe, a party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. However, the staff may file such an answer within fifteen (15) days after service of a

written motion. The moving party shall have no right to reply, except as permitted by the presiding officer or the Secretary or the Assistant Secretary.

(d) *Oral arguments; briefs.* No oral argument will be heard on a motion unless the presiding officer or the Commission directs otherwise. A written brief may be filed with a motion or an answer to a motion, stating the arguments and authorities relied on.

(e) The Board may dispose of written motions either by written order or by ruling orally during the course of a prehearing conference or hearing. The Board should ensure that parties not present for the oral ruling are notified promptly of the order.

(f) *Interlocutory appeals to the Commission.* No interlocutory appeal may be taken to the Commission from a ruling of the presiding officer. When in the judgment of the presiding officer prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense, the presiding officer may refer the ruling promptly to the Commission, and notify the parties either by announcement on the record or by written notice if the hearing is not in session.

(g) *Effect of filing a motion or certification of question to the Commission.* Unless otherwise ordered, neither the filing of a motion nor the certification of a question to the Commission shall stay the proceeding or extend the time for the performance of any act.

(h) Where the motion in question is a motion to compel discovery under §2.720(h)(2) or §2.740(f), parties may file answers to the motion pursuant to paragraph (c) of this section. The presiding officer in his or her discretion, may order that the answer be given orally during a telephone conference or other prehearing conference, rather than in writing. If responses are given over the telephone the presiding officer shall issue a written order on the motion which summarizes the views presented by the parties. This does not preclude the presiding officer from issuing a prior oral ruling on the matter which is effective at the time of such ruling, provided that the terms of the

ruling are incorporated in the subsequent written order.

[27 FR 377, Jan. 13, 1962, as amended at 28 FR 10154, Sept. 17, 1963; 37 FR 15132, July 28, 1972; 39 FR 24219, July 1, 1974; 43 FR 17802, Apr. 26, 1978; 46 FR 30331, June 8, 1981; 46 FR 58281, Dec. 1, 1981]

§2.731 Order of procedure.

The presiding officer or the Commission will designate the order of procedure at a hearing. The proponent of an order will ordinarily open and close.

§2.732 Burden of proof.

Unless otherwise ordered by the presiding officer, the applicant or the proponent of an order has the burden of proof.

§2.733 Examination by experts.

A party may request the presiding officer to permit a qualified individual who has scientific or technical training or experience to participate on behalf of that party in the examination and cross-examination of expert witnesses. The presiding officer may permit such individual to participate on behalf of the party in the examination and cross-examination of expert witnesses, where it would serve the purpose of furthering the conduct of the proceeding, upon finding: (a) That the individual is qualified by scientific or technical training or experience to contribute to the development of an adequate decisional record in the proceeding by the conduct of such examination or cross-examination, (b) that the individual has read any written testimony on which he intends to examine or cross-examine and any documents to be used or referred to in the course of the examination or cross-examination, and (c) that the individual has prepared himself to conduct a meaningful and expeditious examination or cross-examination. Examination or cross-examination conducted pursuant to this section shall be limited to areas within the expertise of the individual conducting the examination or cross-examination. The party or behalf of whom such examination or cross-examination is

conducted and his attorney shall be responsible for the conduct of examination or cross-examination by such individuals.

[37 FR 15132, July 28, 1972]

§2.734 Motions to reopen.

(a) A motion to reopen a closed record to consider additional evidence will not be granted unless the following criteria are satisfied:

(1) The motion must be timely, except that an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented.

(2) The motion must address a significant safety or environmental issue.

(3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

(b) The motion must be accompanied by one or more affidavits which set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied. Affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised. Evidence contained in affidavits must meet the admissibility standards set forth in §2.743(c). Each of the criteria must be separately addressed, with a specific explanation of why it has been met. Where multiple allegations are involved, the movant must identify with particularity each issue it seeks to litigate and specify the factual and/or technical bases which it believes support the claim that this issue meets the criteria in paragraph (a) of this section.

(c) A motion predicated in whole or in part on the allegations of a confidential informant must identify to the presiding officer the source of the allegations and must request the issuance of an appropriate protective order.

(d) A motion to reopen which relates to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely

contentions in §2.714(a)(1) (i) through (v).

[51 FR 19539, May 30, 1986; 51 FR 23523, June 30, 1986]

DEPOSITIONS AND WRITTEN INTERROGATORIES; DISCOVERY; ADMISSION; EVIDENCE

§2.740 General provisions governing discovery.

(a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written interrogatories (§2.740a); written interrogatories (§2.740b); production of documents or things or permission to enter upon land or other property, for inspection and other purposes (§2.741); and requests for admission (§2.742).

(b) *Scope of discovery.* Unless otherwise limited by order of the presiding officer in accordance with this section, the scope of discovery is as follows:

(1) *In general.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. Where any book, document or other tangible thing sought is reasonably available from another source, such as from the Commission's Public Document Room or local Public Document Room, a sufficient response to an interrogatory involving such materials would be the location, the title and a page reference to the relevant book, document or tangible thing. In a proceeding on an application for a construction permit or an operating license for a production or utilization facility, discovery shall begin only after the prehearing conference provided for in §2.751a and shall relate only to those matters in controversy which have been identified by the Commission or the presiding officer in the prehearing order entered at the conclusion of that prehearing conference. In such a proceeding, no discovery shall be had after

penalty, is to be conducted in accordance with the procedures set forth in subpart G of 10 CFR part 2.

[57 FR 4153, Feb. 4, 1992, as amended at 61 FR 39297, July 29, 1996]

§ 2.1203 Docket; filing; service.

(a) The Secretary shall maintain a docket for each adjudication subject to this subpart, commencing with the filing of a request for a hearing. All papers, including any request for a hearing, petition for leave to intervene, correspondence, exhibits, decisions, and orders, submitted or issued in the proceeding; the hearing file compiled in accordance with § 2.1231; and the transcripts of any oral presentations or oral questioning made in accordance with § 2.1235 or in connection with any appeal under this subpart must be filed with the Office of the Secretary and must be included in the docket. The public availability of official records relating to the proceeding is governed by § 2.790.

(b) Documents are filed with the Office of the Secretary in adjudications subject to this subpart either—

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Filing by mail or telegram is complete as of the time of deposit in the mail or with the telegraph company. Filing by other means is complete as of the time of delivery to the Docketing and Service Branch of the Office of the Secretary.

(c) Each document submitted for filing in an adjudication subject to this part, other than an exhibit, must be legibly typed, must bear the docket number and the title of the proceeding, and, if it is the first document filed by that participant, must designate the name and address of a person upon whom service can be made. The document also must be signed in accordance with § 2.708(c). A document, other than correspondence, must be filed in an original and two conforming copies. Documents filed by telegram are governed by § 2.708(f). A document that

fails to conform to these requirements may be refused acceptance for filing and may be returned with an indication of the reason for nonacceptance. Any document tendered but not accepted for filing may not be entered in the docket.

(d) Computation of time and extension and reduction of time limits is done in accordance with §§ 2.710–2.711.

(e) A request for a hearing or petition for leave to intervene must be served in accordance with § 2.712 and § 2.1205(f) and (R). All other documents issued by the presiding officer or the Commission or offered for filing are served in accordance with § 2.712.

[54 FR 8276, Feb. 28, 1989, as amended at 61 FR 39297, July 29, 1996]

§ 2.1205 Request for a hearing; petition for leave to intervene.

(a) Any person whose interest may be affected by a proceeding for the grant, transfer, renewal, or licensee-initiated amendment of a license subject to this subpart may file a request for a hearing.

(b) An applicant for a license, a license amendment, a license transfer, or a license renewal who is issued a notice of proposed denial or a notice of denial and who desires a hearing shall file the request for the hearing within the time specified in § 2.103 in all cases. An applicant may include in the request for hearing a request that the presiding officer recommend to the Commission that procedures other than those authorized under this subpart be used in the proceeding, provided that the applicant identifies the special factual circumstances or issues which support the use of other procedures.

(c) For amendments of Part 50 licenses under § 2.1201(a)(3), a notice of receipt of the application, with reference to the opportunity for a hearing under the procedures set forth in this subpart, must be published in the FEDERAL REGISTER at least 30 days prior to issuance of the requested amendment by the Commission.

(d) A person, other than an applicant, shall file a request for a hearing with—

(1) Thirty days of the agency's publication in the FEDERAL REGISTER of a

notice referring or relating to an application or the licensing action requested by an application, which must include a reference to the opportunity for a hearing under the procedures set forth in this subpart. With respect to an amendment described in § 2.1201(a)(3), other than the one to terminate the license, the Commission, prior to issuance of the requested amendment, will follow the procedures in § 50.91 and § 50.92(c) to the extent necessary to make a determination on whether the amendment involves a significant hazards consideration. If the Commission finds there are significant hazards considerations involved in the requested amendment, the amendment will not be issued until any hearings under this paragraph are completed.

(2) If a FEDERAL REGISTER notice is not published in accordance with paragraph (d)(1), the earliest of—

(i) Thirty days after the requester receives actual notice of a pending application, or

(ii) Thirty days after the requester receives actual notice of an agency action granting an application in whole or in part, or

(iii) One hundred and eighty days after agency action granting an application in whole or in part.

(e) The request for a hearing filed by a person other than an applicant must describe in detail—

(1) The interest of the requester in the proceeding;

(2) How the interests may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in paragraph (h) of this section;

(3) The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with paragraph (d) of this section.

(f) Each request for a hearing must be served, by delivering it personally or by mail to—

(1) The applicant (unless the requester is the applicant); and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville

Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(g) Within ten (10) days of service of a request for a hearing filed under paragraph (c) of this section, the applicant may file an answer. The NRC staff, if it chooses or is ordered to participate as a party in accordance with § 2.1213, may file an answer to a request for a hearing within ten (10) days of the designation of the presiding officer.

(h) In ruling on a request for a hearing filed under paragraph (d) of this section, the presiding officer shall determine that the specified areas of concern are germane to the subject matter of the proceeding and that the petition is timely. The presiding officer also shall determine that the requestor meets the judicial standards for standing and shall consider, among other factors—

(1) The nature of the requestor's right under the Act to be made a party to the proceeding;

(2) The nature and extent of the requestor's property, financial, or other interest in the proceeding; and

(3) The possible effect of any order that may be entered in the proceeding upon the requestor's interest.

(i) If a hearing request filed under paragraph (b) of this section is granted, the applicant and the NRC staff shall be parties to the proceeding. If a hearing request filed under paragraph (c) or (d) of this section is granted, the requester shall be a party to the proceeding along with the applicant and the NRC staff, if the NRC staff chooses or is ordered to participate as a party in accordance with § 2.1213.

(j) If a request for hearing is granted and a notice of the kind described in paragraph (d)(1) previously has not been published in the FEDERAL REGISTER, a notice of hearing must be published in the FEDERAL REGISTER stating—

(1) The time, place, and nature of the hearing;

(2) The authority under which the hearing is to be held;

(3) The matters of fact and law to be considered;

(4) The time within which any other person whose interest may be affected

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 JULIAN MEMO TO B&P ON SERVICE 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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Adria T. Byrdson
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