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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

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In the Matter of)

U.S. ENRICHMENT CORPORATION)

(Paducah, Kentucky and Piketon,
Ohio))

) Docket No.(s) 70-7001/7002
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CLI-96-10

MEMORANDUM AND ORDER

I. Background

On September 19, 1996, the NRC published in the Federal Register (61 FR 49360-63) notice of the certification decision of the Director, Office of Nuclear Material Safety and Safeguards (Director), for the U.S. Enrichment Corporation (USEC) to operate the two gaseous diffusion plants (GDPs) located at Paducah, Kentucky, and at Piketon, Ohio. The NRC also issued a Finding of No Significant Impact (FONSI) concerning the agency's approval of the compliance plan prepared by the U.S. Department of Energy (DOE) and submitted by USEC.

USEC or any person whose interest may be affected, and who had submitted written comments in response to the prior Federal Register Notice on the application or compliance plan under 10 C.F.R. § 76.37, or provided oral comments at an NRC meeting held

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on the application or compliance plan under 10 C.F.R. § 76.39, were eligible to file a petition with the Commission requesting review of the Director's decision within 15 days after publication of the Director's decision. 10 C.F.R. § 76.62(c).¹

The NRC received four petitions for review of the Director's decision. This memorandum and order addresses only certain threshold procedural matters that are raised by those petitions.

II. Petitions for Review

The four petitions and related NRC actions to date are as follows:

1. By letter dated September 30, 1996, Vina K. Colley of McDermott, Ohio, who serves as President of P.R.E.S.S., Portsmouth-Piketon Residents for Environmental Safety and Security, petitioned for Commission review. Her petition was docketed at the NRC on October 4, 1996. Ms. Colley had spoken at the NRC's public meeting in Portsmouth, Ohio, on November 28, 1995, regarding the application and compliance plan. On October 4, 1996, the Office of the Secretary served a copy of her petition on USEC and persons who had provided written comments on the application or compliance plan during the comment period or had provided oral comments at a meeting held on the application

¹ Notice of receipt of the application had appeared in the Federal Register (60 FR 49026) on September 21, 1995, allowing for a 45-day public comment period on the application and noticing public meetings to solicit public input on the certification. A second notice appeared in the Federal Register (60 FR 57253) on November 14, 1995, providing for a 45-day public comment period on the compliance plan. Public meetings were held on November 28, 1995, in Portsmouth, Ohio, and on December 5, 1995, in Paducah, Kentucky.

and compliance plan. The Office of the Secretary invited those served to file comments on Ms. Colley's petition by October 15, 1996.

2. By letter dated October 2, 1996, two individuals, Mark Donham and Kristi Hanson, of Brookport, Illinois, also petitioned for review. Mr. Donham participated in the public meeting in Paducah, Kentucky, on December 5, 1995, and he and Ms. Hanson joined in earlier written comments. Their petition was docketed at the NRC on October 8, 1996. On October 9, 1996, the Office of the Secretary served the petition on the service list, and invited those served to comment on the petition by October 21, 1996.

3. By letter dated September 28, 1996, Neilly Buckalew, submitted a petition for review in the capacity of Executive Director, Kwanitewk, NATIVE Resource/Network, Meriden, New Hampshire. This letter was docketed at the NRC on October 9, 1996. NRC records indicate that neither Neilly Buckalew nor anyone identified as representing Kwanitewk, NATIVE Resource/Network filed written comments on the certification application or compliance plan during the comment period or made oral comments at the public meetings.

4. By letter dated October 3, 1996, Diana Salisbury, of Sardinia, Ohio, petitioned for Commission review on behalf of the Sycamore Environmental Awareness Group. This correspondence was docketed at the NRC on October 7, 1996. By letter dated

October 4, 1996, docketed at the NRC on October 9, 1996, Ms. Salisbury submitted an amendment to her letter of October 3, 1996. NRC records indicate that neither Ms. Salisbury nor anyone identified as representing the Sycamore Environmental Awareness Group filed written comments on the certification application or compliance plan during the comment period or made oral comments at the public meetings.

III. Threshold Procedural Matters

The petitions for review raise certain procedural matters that will be addressed as threshold matters. These matters are as follows:

1. Petitioners' Eligibility to Petition for Review. As noted above, the Commission's regulations provide that USEC or any person whose interest may be affected, and who had submitted written comments in response to the prior Federal Register notice on the application or compliance plan under 10 C.F.R. § 76.37, or provided oral comments at an NRC meeting held on the application or compliance plan under 10 C.F.R. § 76.39, are eligible to file a petition to the Commission requesting review of the Director's certification. Two of the petitions are being rejected for failure to meet the conditions of eligibility for the filing of a petition for review.

First, since neither Neilly Buckalew nor anyone identified as representing Kwanitewk, NATIVE Resource/Network, Meriden, Hew Hampshire, filed written comments on the certification application or compliance plan during the comment period or made

oral comments at the public meetings, they are not eligible to seek Commission review pursuant to the plain terms of 10 C.F.R. § 76.62(c). Second, since neither Ms. Salisbury nor anyone identified as representing the Sycamore Environmental Awareness Group filed written comments on the certification application or compliance plan during the comment period or made oral comments at the public meetings, they are not eligible to seek Commission review pursuant to the terms of 10 C.F.R. § 76.62(c).

The correspondence from these parties setting forth their petitions for review will be referred to the NRC staff for review and for appropriate response. The referral to the NRC staff does not alter the determination that these petitions are not before the Commission for review of the Director's decision.

2. Extension of the Comment Period. In her letter dated September 30, 1996, Ms. Colley also petitions for an extension of the 15-day period for petitioning for Commission review of the Director's decision. She asks that the Commission afford no less than an additional 30-day period for filing a petition and comments on the Director's certification decision. She alleges that the 15-day period is insufficient for citizens to obtain, review and understand the necessary materials. She contends that making materials available at the NRC and at the two GDPs does not allow for full participation by citizens and taxpayers. In their letter dated October 2, 1996, petitioners Donham and Hanson state that they join in the request of other parties for an extension of the 15-day period for requesting review.

The requests for an extension of the petition deadline are being denied. Commission rules allow for time extensions only for "good cause." See 10 C.F.R. § 76.74(b). Here, petitioners have not established good cause for creation of an additional period for seeking Commission review and for filing further comments. Petitioners do not identify any particular documents that require additional time for review and comment. In addition, Ms. Colley focuses in large part only on the potential for further review by other citizens and taxpayers across the nation; she gives no specific reason why she or others eligible to file petitions need additional time. Commission rules contemplate a Commission decision on petitions for review within a relatively short (sixty-day) time period. See 10 C.F.R. § 76.62(c). Extending the petition deadline in the absence of a strong reason is not compatible with the contemplated review period.

3. Expansion of the Right to Seek Review. Ms. Colley requests that the Commission permit comments by any interested person of the United States. In its rules, however, the Commission did provide a period for general public comment on the application and compliance plan submitted by USEC. Thus, Ms. Colley appears to object to the NRC rule that makes early participation a condition for filing petitions seeking Commission review of the Director's decision.

This procedural requirement, in 10 C.F.R. § 76.62(c), was established through notice-and-comment rulemaking. Ms. Colley's

objection to the requirement and request for its alteration will not be entertained as part of the Commission review of the Director's decision, which necessarily focuses on technical and environmental considerations peculiar to the Piketon and Paducah facilities. The Commission has established a process for entertaining a petition for rulemaking (10 C.F.R. § 2.802), i.e., to issue, amend or rescind any regulation, that petitioner may wish to pursue.

Other matters raised by the petitions, including, for example, the various substantive challenges to the Director's certification decision and Ms. Colley's request for national public hearings on continued operation of the GDPs, are reserved for later Commission decision.²

For the foregoing reasons, and pursuant to my authority under 10 C.F.R. § 76.72(b), it is hereby ORDERED that:

1. The petition for review dated September 28, 1996, from Neilly Buckalew, submitted in the capacity of Executive Director, Kwanitewk, NATIVE Resource/Network, Meriden, New Hampshire, is rejected and referred to the NRC staff for review and appropriate response;

2. The petition for review dated October 3, 1996, and its amendment dated October 4, 1996, by Diana Salisbury, of Sardinia,

²The Commission has begun receiving responsive comments to the petitions, including a response from USEC to the Colley petition. Any issue raised in the responses and not addressed in this order is reserved for later Commission determination.

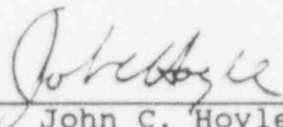
Ohio, on behalf of the Sycamore Environmental Awareness Group, are rejected and referred to the NRC staff for review and appropriate response;

3. The request by petitioners Colley, Donham and Hanson for an additional period for seeking review and submitting comment on the Director's decision is denied; and,

4. The request by petitioner Colley for expansion of the right to petition for Commission review of the Director's decision to any interested person is denied.



For the Commission,



John C. Hoyle
Secretary of the Commission

Dated at Rockville, MD,
this 18th day of October, 1996.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

U. S. ENRICHMENT CORPORATION

(Paducah, Kentucky and Piketon, Ohio)

Docket No.(s) 70-7001/7002

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMM MEMO & ORDER (CLI-96-10) 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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COMM MEMO & ORDER (CLI-96-10)

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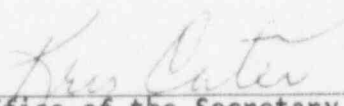
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COMM MEMO & ORDER (CLI-96-10)

Dated at Rockville, Md. this
18 day of October 1996


Office of the Secretary of the Commission