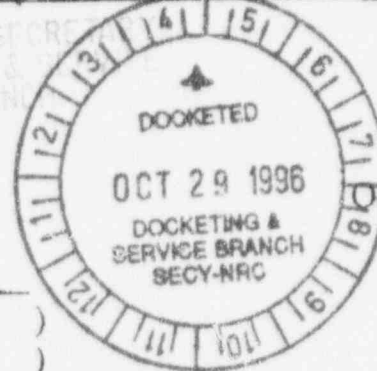


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United States of America  
Nuclear Regulatory Commission  
Shirley Ann Jackson, Chair  
Kenneth Rogers  
Greta J. Dicus  
Nils Diaz  
Edward McGaffigan, Jr.

Post-it Fax Note	7671	Date	Oct 25	# of pages	5
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OFFICE OF SECRETARY  
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BRANCH



October 25, 1996

In the Matter of

MEMORANDUM AND ORDER

U.S. ENRICHMENT CORPORATION

(Paducah, Kentucky and Piketon, Ohio)

Docket No.(s) 70-7001/7002

CLI-96-10

VERIFIED COMPLAINT  
ADMINISTRATIVE PETITION FOR ACTION

This verified complaint and administrative petition for action is regarding the Memorandum and Order of October 23, 1996 in the Matter of the U.S. Enrichment Corporation. In response to the Nuclear Regulatory's threshold findings, we submit the following:

1.) Finding:

The Nuclear Regulatory Commission denied eligibility status to petitioner, Neilly Buckalew as representative of Kwanitewk NATIVE Resource/Network and signatory, to seek review by the Commission regarding the Commission's findings in the matter of certification of the gaseous diffusion plants published in the Federal Register notice of September 16, 1996, Docket No.(s) 70-7001-7002. The Commission's denial of eligibility status was based on "failure to meet the conditions of eligibility for the filing of a petition for review." (p.4, Memorandum and Order) This determination is based on the terms set forth in 10 CFR 76.62(c).

1a.) Response:

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The administrative procedure required by the Commission in this matter exceeds the Commission's statutory authority and pre-empts the requirements of Federal law under the Administrative Procedure Act governing the right of all interested persons to participate during administrative adjudication and rulemaking. Section 553(e) states that any "interested person" has the right to petition for the issuance, amendment, or repeal of a rule. In addition, the Energy Policy Act of 1992 does not grant the Commission any, nor particular authority to limit or circumscribe participation of U.S. citizens in matters regarding the gaseous diffusion plants nor the U.S. Enrichment Corp.

In addition, the actions of the Commission in this matter appear to be inconsistent with its own reluctance to act outside of statutory authority in other matters. In response to a request for technical assistance submitted July of 1996 by the Manager of the Low-Level Radioactive Waste Program of the California Health Services. Chairperson Shirley Jackson clearly acknowledged the Commission's limitations to interpret and implement federal laws in other matters. Jackson stated that NRC's "authority and expertise to interpret and implement the AEA (Atomic Energy Act) and the LLWRPA (Low-Level Waste Radioactive Waste Policy Act) does not extend to Federal law on public land transfers."

Similarly, in this instance the matter regards a major public assets paid for by taxdollars, transferred through a lease from the Department of Energy to a now federal corporation slated to be "private" entity, the U.S. Enrichment Corp. Furthermore, the United States Enrichment Corp is currently backed by U. S. Treasury bonds. As a taxpaying citizen, I co-OWN USEC and I co-OWN the GDP's where I have full and equal right as does USEC to comment and participate in matters regarding the Commission's findings and actions on matters regarding the GDP's and USEC

Would the Commission please cite the exact statutory law that would grant authority to the Commission to preclude any person or interested party, and/or citizen from full participation regarding the Commission's findings in the matter of the GDP's and USEC publicly noted in the Federal Register?

## 2.) Action:

The Commission has funneled and circumscribed participation of interested persons to only those persons who submitted written or oral comments during specific hearings at specific locations and to those who submitted comments on SPECIFIC ACTIONS ONLY regarding the certification process.

## 2a.) Response:

This would seem to indicate that the Commission held or holds allocated funding for interested persons to either 1.) travel to the specific hearing sites

in order to fully participate in the certification process or 2.) to receive in a timely manner the necessary documents visa mail. If the Commission does not have the funds either to subsidize travel costs of, or mailing costs to interested persons, then the Commission has dampened democratic participation that goes well beyond the scope of their authority.

Also, did the Commission publish a notice in national newspapers in addition to the federal register offering such aforementioned subsidies to U.S. citizens?

And, did the Commission publish in national newspapers when the hearings would take place? Along with such notice, did the Commission clearly state the limits that would be placed on citizen participation in latter NRC proceedings regarding the GDP's and USEC, if interested persons did not take part in the NRC proceedings of fall 1995 as well as hearings of November, 1995 in Ohio and the counter hearing in Kentucky?

### 3.) Action:

The Commission has funneled and circumscribed participation of interested persons to only those persons who submitted written or oral comments on SPECIFIC COMMISSION ACTIONS ONLY.

### 3 a.) Response:

The two gaseous diffusion plants have been under the direct regulatory control of the Department of Energy, as well other coordinating regulating agencies such as the Environmental Protection Agency since the 1970's. As directed by the Energy Policy Act of 1992, direct oversight is to be transferred over to the Nuclear Regulatory Commission.

Narrowing comments to only the Commission's actions not only goes beyond the statutory authority of the Commission, but also ignores the fact that direct oversight has only recently been transferred to NRC. It is considerably irresponsible if not astonishing to disconnect past participation of citizens that took place while the GDP's were still under the direct oversight of the DOE, and during the hazy transfer process. (And, DOE still has control over various regulatory and procedural matters at the two GDP's)

As representative of Kwanitewk, I have been actively engaged in commenting on the transfer of oversight of the GDP's (as well as privatization) with written documentation to the Department of Energy including Secretary Hazel O'Leary, and have in person delivered comments to Department of Energy Officials, including Bob Alvarez. In addition, I have met with Senator Murkowski's staff April 15, 1996 (along with Military Production Network representatives) regarding the two GDP's and USEC.

Finally, to place a wall around only the Commission and Commission's actions is directly counter to the Presidential Memo's directing agencies to coordinate their actions. (Exec. Order 12875 Enhancing the Intergovernmental Partnership and Exec. Order 12866 Regulatory Planning.)

4.) Defining "interested persons who MAY be affected"

DOE 50 mile radius

National Historic Protection Act

The Department of Energy historically has considered persons within a 50 mile radius of DOE federal facilities as potentially and directly affected persons. The Commission has used the terms "may be affected" as one of the prescriptions describing those who may participate in administrative findings regarding the GDP's. The Great Serpent Mound of Ohio is well within the 50 mile radius of the Portsmouth Gaseous Diffusion plant. This site is of cultural and historical significance (for ten's of thousands of years) to many American Indian Nations, Groups, Bands, Organizations, and Peoples - this includes specifically the Lenape and Iroquois. The cultural and historical ties of the Lenape and Iroquois are well recognized by the Ohio Historical Society and in their literature/documentation about the Serpent Mound. As a Lenape, I am a person who "MAY be affected" by actions of the Commission regarding the GDP of Ohio. As director of Kwanitewk, I represent American Indian people who also MAY be affected by actions of the Commission regarding the GDP of Ohio.

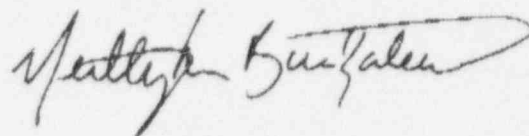
In addition, the National Historic Protection Act regulations recognizes and grants the right of Native Americans both recognized and un-recognized to participate and register comments regarding Federal actions that MAY affect historical and cultural sites. The Commission cannot ignore the requirements of a major Federal law. In fact, the Commission has requested comments from the Ohio Historical Society regarding the GDP of Ohio. Thus, this is an admission on the part of the Commission that the requirements of the National Historical Protection Act applies to the Commission actions regarding the GDP of Ohio. The Commission cannot cut-out the right granted to ALL citizens and interested persons to participate under the NHPA on matters that MAY affect a prominent and significant National Historic site.

The regulations state in general "members of the public with an interest in an undertaking and its effects on historic properties should be given reasonable opportunity to have an active role in the ... process." As the lead agency, the Commission must meet the full requirements of the NHPA which also requires coordination of agency efforts.

For the above stated reasons, and with appropriate consideration for full public participation in Commission proceedings, we respectfully request that the

Commission reconsider the threshold findings in the Memorandum and Order of October 18, 1996, CLI-96-10, and review our petition of October

Respectfully Submitted,



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Director Kwanitewk NATIVE Resource/Network  
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Meriden, NH 03770

cc: United States Civil Rights Commission  
Office of Attorney General, Ohio

Delivered this 25th day of October by facsimile transmission to the Nuclear Regulatory Commission in Washington, D.C. office of the Director.

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