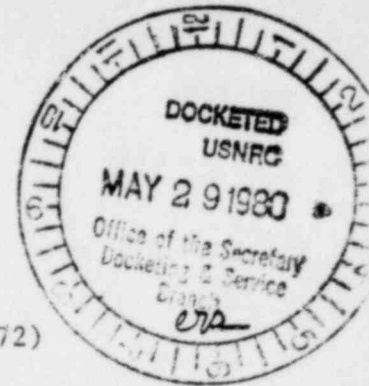


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the Matter of)
)
PROPOSED RULEMAKING ON THE STORAGE AND) PR-50, 51 (44 FR-61372)
DISPOSAL OF NUCLEAR WASTE)
)
(Waste Confidence Rulemaking))

ORDER EXTENDING TIME TO FILE STATEMENTS AND
CROSS-STATEMENTS OF POSITION
(May 29, 1980)

On May 8, 1980, the State of Minnesota, a full participant in this proceeding, filed a motion for a 60-day extension of time in the schedule set forth in the First Prehearing Conference Order of February 1, 1980. In the alternative, this participant also moved that it be granted additional time to file its own statement of position. Similar motions or supporting responses were subsequently filed by the States of Wisconsin (May 13); Hawaii, Illinois, Louisiana and Missouri (May 14); Ohio (May 14); South Carolina and Vermont (May 16); California, Delaware and Massachusetts (May 20); and Texas (May 21). The alternative requests for individual extensions of time were opposed by the Atomic Industrial Forum (May 15), Utility Nuclear Waste Management Group (May 16, UNWVG, formerly UVMG), and the United States Department of Energy (DOE, May 21).

Basically, the reasons advanced by the movants revolve around allegations concerning the Staff's tardiness in filing its "core documents" bibliography, the 700-page length of DOE's statement of position and its slow delivery by the postal service, and the failure or delay of the Commission in ruling on NRDC's motion for certification of the question of solicitation of opinions of outside experts. These reasons are insufficient to justify a further 60-day extension of the schedule, or to grant individual extensions of time. However, a shorter

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adjustment of time will be allowed for the filing of statements and cross-statements of position, with the admonition that any further requests for delay will be viewed with disfavor.

The Commission entered its Memorandum and Order on May 23, 1980, defining the role of the Staff in this waste confidence rulemaking proceeding. It noted that NRDC had filed a motion dated February 14, 1980, contending that the Staff should solicit the views of technical experts. The California Energy Commission (CEC) by motion dated February 20, 1980, suggested that a body of experts should be empaneled to mediate the technical issues presented by this rulemaking, and that the Commissioners themselves or a committee composed of at least two of them should conduct this proceeding. The latter suggestion was discussed as follows:

"As the Presiding Officer noted in his Order of February 1, 1980, the Commission carefully considered the procedure it wished to follow and decided to employ hybrid rulemaking procedures and to designate a Presiding Officer who will monitor the early stages of the proceeding and assist the Commission in conducting the later stages of the proceeding. We believe that it would be premature at this preliminary stage of the proceeding to determine what procedures would be appropriate for the later stages of this proceeding. Accordingly, after the cross-statements are filed, CEC may again present this suggestion if it believes that this procedure would be appropriate for conducting the next stage of this proceeding."^{1/}

The Commission directed its Office of Policy Evaluation to form a "working group" to advise the Commission regarding the adequacy of the record to be compiled. This working group consists of experts from the Offices of Policy Evaluation, the General Counsel and the Executive Legal Director. It is provided technical support by the program offices of Nuclear Materials Safety and Safeguards, Research, and Standards Development. The working group will review the participants' submissions,

^{1/}Memorandum and Order dated May 23, 1980, p. 2, fn. 2.

and after the cross-statements have been filed, it will identify issues in controversy and any areas in which additional information is needed. The working group will assist in obtaining such further information, and it will summarize the record following the last phase of the hearing. The Memorandum and Order also stated:

"The Commission believes that at the present stage of the proceeding the establishment of this working group adequately addresses the concerns expressed in the motions referred to above. Many issues may be resolved by the participants' position papers and cross-statements, thus obviating the need for additional expert opinions on those issues. Accordingly, the Commission believes it would be premature to solicit expert opinion at this time. After these documents have been filed, the working group will be able to identify the important and controversial issues and then to determine whether the special participation by experts as urged by NRDC and CEC would materially clarify particular issues or disputed evidence."^{2/}

CEC's suggestion for technical mediation was also held to be premature at this time.^{3/}

The First Prehearing Conference Order of February 1, 1980 established June 9 as the date for participants to file statements of position. This allowed four months for the preparation of statements by the full participants, and it was two months longer than the "approximately 60 days" contemplated by original notice of proposed rulemaking (44 FR 61372, 61374). The participants were directed on February 1 to "forthwith commence the preparation of their statements of position, which will be their principal contribution to the waste confidence proceeding" (Prehearing Order, p. 11). At that time the parties had been told what many of the basic documents were, including the IRG report and its collected background

^{2/} Id., p. 3.

^{3/} Id., p. 3, fn. 4.

material (TID-29442), DOE's Draft GEIS on Waste Management, NRC's Proposed Licensing Procedures for the Disposal of High-Level Radioactive Wastes in Geologic Repositories, 44 FR 70408-421, December 6, 1979, regular collection of orders, issuances, submissions generated by or communicated to NRC directly related to PR 50, 51, and the like. In addition, the participants have had available the Staff's bibliography of core documents of which copies are available (March 28, 1980), the statement of views by the Council on Environmental Quality (April 15, 1980), the preliminary statement of the United States Geological Survey (April 15, 1980), and the Staff's Summary of NRC Licensing Program for High-Level Radioactive Waste Disposal (April 16, 1980).

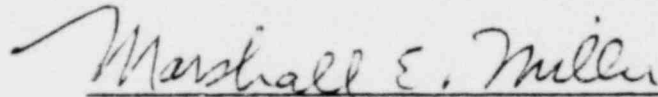
The full participants have shown some capability of making a significant contribution to this proceeding, and they are not solely dependent upon information contained in the DOE statement of position, which was promptly filed on April 15, 1980. The participants have had ample opportunity to prepare their own affirmative statements of position, and they have been on notice of this requirement since the publication of the Federal Register notice on October 25, 1979 (44 FR 61372, 61374). The fact that the DOE statement of position was 700 pages long rather than the estimated 500 pages, or that the U. S. mail service is not the speediest, can scarcely justify a further major time extension after the original liberalization of deadlines.

It is now time for the full participants to make their own "principal contribution" to this proceeding by preparing and filing their statements and cross-statements of position. As the Commission has indicated, many of the participants' other concerns regarding the adequacy of the final record are premature until this first phase of rulemaking has been completed. Accordingly,

the following somewhat revised schedule shall govern the conduct of the first phase of this proceeding:

- July 7, 1980 Statements of position shall be filed.
- September 5, 1980 Cross-statements shall be filed.
- October 6, 1980 All participants shall file suggestions as to nature and scope of further proceedings, additional areas of inquiry or further data or studies.

It is so ordered.



Marshall E. Miller
Presiding Officer

Dated at Bethesda, Maryland
this 29th day of May 1980.