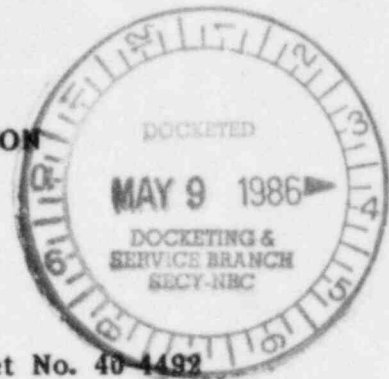


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



In the Matter of

AMERICAN NUCLEAR CORPORATION, ET AL

)
)
) Docket No. 40-4492
)
) (50 Fed. Reg. 46370)

MOTION TO AMEND ORDER ESTABLISHING
BRIEFING SCHEDULE

The eleven uranium mill licensees who are parties to this proceeding (the "mill licensees") hereby move for an order: (1) amending the Commission's April 18, 1986 order to require that the NRC staff file the first brief in these summary proceedings; or (2) in the alternative, extending the time for the filing of the mill licensees' brief for a period of 32 days, or until June 20, 1986. In support of this motion, the mill licensees state as follows:

1. On April 18, 1986, the Commission entered an order adopting summary procedures and directing that the mill licensees file a brief within 30 days. The Commission also ordered that Intervenor Environmental Defense Fund (EDF) file any response brief within 30 days thereafter and that the mill licensees file any reply brief thereto within 15 days. No provision was made for the filing of a brief by the NRC staff setting forth the rationale and authority for the groundwater monitoring license amendments.

2. The mill licensees agree that summary procedures are appropriate in this case. However, they also believe that the briefing sequence adopted here is not only unusual and unreasonable, but ultimately will lead to confusion and delay in these proceedings. As the proponent of the license amendments, the NRC staff should have the burden of going forward with a showing that it properly exercised its discretion and that the proposed license amendments are justified taking into account the risks

to public health, the costs of implementation, and other pertinent factors under the Atomic Energy Act and the Administrative Procedure Act. The mill licensees submit that it would be inappropriate and inefficient for them to file an opening brief addressing what they think is the staff's position, and then have the staff come in and request permission to file a brief to clarify its position or otherwise respond to the mill licensees' brief.

3. Accordingly, to promote the orderly disposition of this case, the NRC staff, as the proponent of the license amendments, and EDF, as intervenor aligned with the NRC staff, should be ordered to file their briefs first. Thereafter, the mill licensees would file a brief in response to the staff's position.

4. In the alternative, the mill licensees move for an extension of time of 32 days, or until June 20, 1986, in which to file their opening brief. As the Commission is aware, the domestic uranium mining and milling industry has been found to be nonviable by the Secretary of Energy. This seriously depressed economic condition has resulted in substantial staff reductions throughout the industry. The industry's limited staff has been occupied by an unending barrage of regulatory proposals including, most recently, the Environmental Protection Agency's proposal to impose detailed management and work practice controls during the operational phase of licensed uranium mills. Because of the extensive effort required to prepare comments on EPA's proposal, which were filed on May 1, 1986, the industry is just now able to turn its attention to developing an appropriate response to the Commission's April 18 order. The views of the eleven licensees involved in these proceedings will have to be solicited and an appropriate response coordinated.

5. As the Commission notes in its order, this response must take into account a number of new developments, which include also the NRC's draft proposed standards for protection of groundwater. As a result of these developments, the issues to be

emphasized in any brief may differ from those initially identified in the requests for hearing.^{1/}

For the foregoing reasons, the mill licensees respectfully request that their Motion to Amend Order Establishing Briefing Schedule be granted.

Respectfully submitted,

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^{1/} For example, the Commission's tentative decision to develop groundwater monitoring requirements on a site-specific basis in individual licensing proceedings (rather than in a generic rulemaking) makes it essential that the staff exercise discretion and judgment in amending licenses and not, as it has done here, rigidly apply monitoring requirements across the board.

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing Motion to Amend Order Est ing
Briefing Schedule were mailed postage prepaid this 9th day of May, 1986 to:

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