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SHELDON, HARMON, ROISMAN & WEISS

1025 15TH STREET, N.W.
SUITE 500
WASHINGTON, D.C. 20005

TELEPHONE
(202) 833 9070

KARIN P. SHELDON
GAIL M. HARMON
ANTHONY Z. ROISMAN
ELLYN R. WEISS
WILLIAM S. JORDAN, III *
* ADMITTED IN MICHIGAN ONLY

March 7, 1979

Joseph M. Hendrie, Chairman
John Ahearne, Commissioner
Victor Gilinsky, Commissioner
Richard T. Kennedy, Commissioner
Peter A. Bradford, Commissioner
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: UCS Petition for Emergency and Remedial Action

Gentlemen:

Enclosed is a Motion for Expedited Decision and a document containing UCS' response to the staff's latest answers to questions posed to it through the Office of Policy Evaluation. We are urging the Commission to take action now to grant the relief requested by UCS and resolve the questions raised by UCS' Petition for Emergency and Remedial Action.

As UCS understands his Congressional testimony of Monday, February 26, Commissioner Gilinksy gave his opinion that the most significant practical effect of the withdrawal of endorsement of WASH-1400 is on the Commission's responsibility for the continued safety of operating plants that the Commission must take decisive action when presented with a safety problem in operating plants. The necessity to take such action is compellingly presented by UCS' petition.

The staff has given you reasons why it only "partly" relied on WASH-1400 in recommending that plants with known safety defects be allowed to operate "in the interim." We have shown in our enclosed motion that this post hoc rationalization does not avoid the critical problem whether based on newly-articulated "engineering judgment" or on WASH-1400, the fact is that the staff argues for what amounts to a waiver of minimum safety regulations on the basis that the probability of an accident occurring before the plant is modified is low. This is precisely the approach which the Appeal Board has unequivocally rejected.

We note that the staff has accused UCS of "mischaracterizing" the nature of its reliance on WASH-1400. Without

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arguing here about merits of the staff's new grounds for supporting interim operation, the staff misses a crucial distinction. The question is what the Commission relied on in denying emergency relief. The Commission is the decision-maker in this matter. We believe that the decision of the Commission speaks for itself and that each Commissioner should ask himself to what degree he relied on WASH-1400 to provide technical assurance that interim operation of unsafe reactors could be allowed without serious threat to public health. The Commissioners should also ask themselves, if they did not rely on WASH-1400, what else existed in the record besides WASH-1400 to support such a conclusion? Even if you decide that probabilities can be used in this sort of situation, reversing the holding in Vermont Yankee, the conclusion that the probability of a fire is acceptably low must be based on credible evidence lacking here.

Throughout the course of this proceeding, UCS has been severely handicapped becuase of the failure of the case to come to a head at any point. UCS originally made its factual and legal case in a detailed written filing in November, 1977. The staff responded several times, completing its major response on December 15, 1977. UCS replied in January, 1978. In a normal situation, that would have completed the written presentations of the parties, followed by either an evidentiary hearing or oral argument, the closing of the record, and a decision. In this proceeding, however, the staff has been given endless bites at the apple, numerous chances to explain or modify its weak positions after UCS had discredited them, and the opportunity on many occasions to direct itself to specific questions addressed to it by the Commission. We cannot help but have the impression that the primary goal has been to find some way of avoiding the conclusions compelled by UCS' filings.

In contrast, UCS has never had questions directed to it. We have taken the course of trying to divine what the Commission considers the crucial questions from what it asks the staff, and have filed our own unsolicited responses. In an effort to bring some fairness to the procedure, we asked the Commission to allow us to respond to the draft decision. There is no other way that we can possibly know what the Commissioners consider to be the weaknesses in our case. Since the staff has been given many chances to shore up the

weaknesses in its case, we believe such an opportunity for UCS would only amount to fundamental fairness.

We understand that the Commission fears setting a "precedent" by circulating a draft decision. As we have shown you, though, your own boards have used this procedure when it seemed advisable. Indeed, the special board sitting on the rulemaking for Table S-3 recently adopted a similar procedure. The procedure is far from revolutionary.

The Commission hardly need worry about establishing a precedent which will be widely used. After all, this is the first case of its kind and there are not likely to be very many more like it. Any precedent established here will have only narrow application. Therefore, UCS renews its request for a fair opportunity to review and comment on the draft decision.

Finally, whether or not a draft decision is circulated, UCS requests an opportunity to meet with the Commissioners to review this case and respond orally to your questions. We are willing to use any format, whether informal or organized along the lines of an oral argument. We believe that such a meeting would allow all parties to focus on what are the crucial issues to the Commission now. We believe that we have presented a compelling case and have rebutted the defenses of the staff. We also recognize that the record is lengthy and complex and that the Commissioners may have questions about UCS' positions which we feel confident we could address, given the opportunity.

UCS is available on reasonable notice at the Commission's convenience.

Very truly yours,

Ellyn R. Weiss

ERW/dmw
Enclosures

cc: Leonard Bickwit, General Counsel
Samuel J. Chilk, Secretary
Docketing & Service