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August 19, 1980

Ivan W. Smith, Esquire
Atomic Safety & Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Walter H. Jordan
881 W. Outer Drive
Oak Ridge, Tennessee 37830

Dr. Linda W. Little
5000 Hermitage Drive
Raleigh, North Carolina 27612

RE: TMI Restart, Docket 50-289

Dear Members of the Board:

I am writing to reiterate UCS's position, stated at the pre-hearing conference on August 12, that this Board should order the staff and licensee to respond to UCS's summary judgment motions. Although we understand the Board to have decided at the prehearing conference that it will not rule on the merits of UCS's motion, it is our view that the rules do not permit what amounts to a waiver of our right to an answer.

10 CFR §2.749(b) provides:

When a motion for summary judgment is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of his answer; his answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of fact. If no such answer is filed, the decision sought, if appropriate, shall be rendered.

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UCS followed the deadline established by this Board and filed what we believe to be compelling summary judgment motions. In this connection, it should be noted that the fact that the particular statements quoted were primarily from staff documents does not weaken their force vis-a-vis the licensee. We cite and

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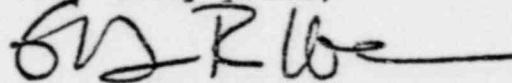
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quote these documents as support for assertions of fact contained therein and assertions of fact derived therefrom. These facts, if true (and note is as yet denied by either the staff or licensees) entitle UCS, in our view, to judgment with respect to the issues raised by UCS contentions Nos. 13 and 5. The same underlying assertions of fact could have been made with no accompanying citations whatsoever; the effect would still have been to shift the obligation to both opposing parties to deny them under 10 CFR §2.749(b).

UCS is entitled to answers from the licensee and staff. We respectfully submit that it is both unfair and inconsistent with the regulations to provide us with an opportunity to file such motions and then, while conceding their logical force, to deny them without even requiring the opposing parties to come forward with a response. Even if the Board will not decide these motions as the merits, UCS has at least earned the right to notice of the manner in which the licensee and staff will meet its facts and arguments at trial.

Very truly yours,



Ellyn R. Weiss

ERW/lc

cc: TMI service list