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UNION OF CONCERNED SCIENTISTS

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May 16, 1985 MAY 17 A11:53

Nunzio J. Palladino, Chairman
Thomas M. Roberts, Commissioner
James K. Asselstine, Commissioner
Frederick M. Bernthal, Commissioner
Lando W. Zech, Commissioner
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

OFFICE OF SECRETARY
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Gentlemen:

On April 26, 1985, UCS received a copy of a letter dated April 9, 1985 from John Stolz, Chief, Operating Reactors Branch #4, to Henry D. Fukill, Vice President and Director - TMI-1. This letter contains the staff's conclusion that all pertinent equipment has been identified and is environmentally qualified for the radiation levels associated with a large break loss-of-coolant accident (LOCA). The staff's letter encloses a Safety Evaluation Report. While these documents are not denoted as the certification to the Commission required by CLI-84-11, we assume that they may be treated as such.

In CLI-84-11, the Commission narrowed the scope of the issues concerning environmental qualification of TMI-1 safety equipment to one question: the qualification of certain electrical equipment (that needed to respond to small break LOCA and loss of main feedwater accidents) to the radiation levels for a large break LOCA specified by the DOR guidelines. The staff was directed to certify this information to the Commission by mid-August 1984. It has, however, taken the staff ten months longer to accomplish the task.

UCS is at this point entitled to review and comment on the data and analysis used by the staff. The ability of this safety equipment to survive an accident was a UCS contention properly raised and pursued within the scope of the restart proceeding. It may not legally be resolved on the basis of one party's extra-record submissions to the Commission, even if that party is the NRC staff.

As the Appeal Board recognized in this proceeding, if a matter goes beyond the implementation of a Board decision and involves the resolution of disputed matters, "such determinations must be made by an adjudicatory body, not the staff." ALAB-729, 17 NRC 814, 888 (1983). An adjudicatory tribunal may not delegate its fundamental decision-making functions, particularly not to a party in the case. Nor may agency employees engaged in investigative or prosecuting functions "participate or advise in the decision." 5 U.S.C. 554(d). See Trans World Airlines v. C.A.B., 254 F.2d 90 (D.C. Cir. 1958); F.T.C. v. Atlantic Richfield Co., 567 F.2d 96, 102 (D.C. Cir. 1977); King v. Caesar Rodney School District, 380 F. Supp. 1112, 1118 (D. Del. 1974).

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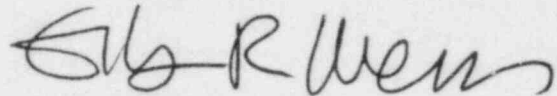
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Nor can the Commission resolve a factual issue in the proceeding by fiat, without allowing participation. See Minnesota v. N.R.C., 602 F.2d 412 (D.C. Cir. 1979). The law requires at least a basic opportunity to review the data and respond, putting aside for the time being the separate question of whether the law also requires an adjudication.

We have read the staff's April 9 letter and the attached SER. As to the two fundamental questions here, those documents are singularly uninformative. First, we are not told what equipment was determined to be within the scope of the Order (i.e., required for a small break LOCA or loss of main feedwater) and the criteria used for this determination. Second, there is no indication of how it was determined that this equipment was qualified for the appropriate radiation levels. Reference is repeatedly made to letters, oral discussions and repeated audits which are not provided.

Therefore, as a first necessary step, UCS asks the Commission to direct the staff to provide us immediately with the underlying data and documentation concerning the SER conclusions, including but not limited to all documentation, analyses, letters, submittals, notes of oral discussions and test results. Considering GPU's remarkably poor history regarding claims of environmental qualification, UCS believes that a review is more than warranted.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Ellyn R. Weiss". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Ellyn R. Weiss
General Counsel

cc: TMI-1 Service List