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December 26, 1991

OVERNIGHT MAIL

Robert C. Hardzog
Chief, FOIA-LPDR Branch
Division of Freedom of Information
Public Services
Office of Administration
United States Regulatory Commission
Washington, D.C. 20555

Re: FOIA Request No. 91-533/University of Cincinnati

Dear Mr. Hardzog:

As I indicated to you on the telephone today, I represent the University of Cincinnati in connection with matters presently before the Nuclear Regulatory Commission. On November 27, 1991, I made a FOIA request with respect to matters raised in a "synopsis" (attached to the FOIA request) received by the University of Cincinnati from the NRC in November of 1991. In this synopsis, the NRC indicates that it has "substantiated" various allegations that were made in connection with a prior NRC investigation. In conjunction with the transmittal of the "synopsis," the NRC invited the University to participate in an enforcement conference relating to the NRC's substantiation of the allegations raised during the investigation. See 10 CFR Part 2 Appendix C(IV). The enforcement conference is currently scheduled in Chicago on January 29, 1992.

As I indicated to you on the telephone today, I would appreciate it if you would do everything in your power to expedite consideration of the University's prior FOIA request. This information is critical to the University's preparation for the enforcement conference to be held on January 29, 1992. It is my understanding that a decision will be made within a week and I will be notified by telephone as soon as that decision has been made.

Since you indicated to me that my FOIA request will in all likelihood be denied on the basis that there is an "ongoing investigation," I would like the Commission to reconsider based upon the following:

- 1) The synopsis sent to the University indicates that

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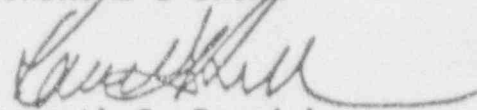
been "substantiated." It is inconceivable that the Commission can take the position that an investigation is still "ongoing," but on the other hand claim that various allegations raised in that very same investigation have been "substantiated."

- 2) According to the NRC's regulations, one of the purposes of an enforcement conference is to "discuss the violations." Again, I find it inconceivable that the NRC would invite the University to discuss "violations" that have been "substantiated," but at the same time purport to describe its investigation as "ongoing." If the investigation is truly "ongoing," I suggest that the enforcement conference be postponed until the NRC completes its investigation so the issues may be discussed thoroughly and intelligently.
- 3) Although the University has been invited by the NRC to participate in an enforcement conference to discuss the alleged violations, the NRC has provided the University with nothing more than a two paragraph bare bone synopsis of the alleged violations. Without the evidentiary summary and report that supports this synopsis, it will be impossible for the University to adequately prepare for the enforcement conference and will effectively prevent the University from raising mitigation factors and developing other information which will help to determine whether any enforcement action is appropriate. It is simply unfair to invite the University to participate in an enforcement conference, yet deny the University the information and background material necessary to an effective and meaningful conference.

I look forward to hearing from you as soon as possible. If you have any questions, please do not hesitate to contact me.

Yours very truly,

DINSMORE & SHOHL



Kenneth S. Resnick

cc: Mr. John A. Grobe
Chief, Nuclear Material Safety Branch
U.S. Nuclear Regulatory Commission
Region III
KSR:ymm

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