

March 28, 1989

Docket Nos. 50-266
and 50-301

DISTRIBUTION:
Docket Files
PDIII-3 r/f
MVirgilio
WSwenson
OGC-WF1
BGrimes
PDIII-3 Gray

NRC & Local PDRs
GHolahan
PKreutzer
JHannon
EJordan
ACRS(10)

Mr. C. W. Fay, Vice President
Nuclear Power Department
Wisconsin Electric Power Company
231 W. Michigan Street, Room 308
Milwaukee, Wisconsin 53201

Dear Mr. Fay:

SUBJECT: POINT BEACH NUCLEAR PLANT, UNIT NOS. 1 AND 2 - FUEL STORAGE EXIGENT
TECH SPEC CHANGE CONSIDERATION NOTICE (TAC NOS. 72719 AND 72720)

Enclosed is a "Notice of Consideration of Issuance of Amendments to
Facility Operating Licenses and Proposed No Significant Hazards Consideration
Determination and Opportunity for Hearing" concerning your application for
amendments dated March 23, 1989. This Notice was forwarded to the Office of the
Federal Register for publication.

Sincerely,

/s/

Warren H. Swenson, Project Manager
Project Directorate III-3
Division of Reactor Projects - III,
IV, V and Special Projects
Office of Nuclear Reactor Regulation

Enclosure:
As stated

cc: w/enclosure
See next page

Office: LA/PDIII-3
Surname: PKreutzer
Date: 3/24/89

JVM
PM/PDIII-3
WSwenson/tg
3/24/89
for

JVM
PD/PDIII-3
JHannon
3/24/89
for

C/P-1
cc
OGC
APH
3/27/89
Subject to
corrections &
additions, as
noted LKZ
SH Lewis
3/28/89

8904030041 890328
PDR ADOCK 05000266
P PDC

DFOL
1/1

Mr. C. W. Fay
Wisconsin Electric Power Company

Point Beach Nuclear Plant
Units 1 and 2

cc:

Mr. Bruce Churchill, Esq.
Shaw, Pittman, Potts and Trowbridge
2300 N Street, N.W.
Washington, DC 20037

Mr. James J. Zach, Manager
Point Beach Nuclear Plant
Wisconsin Electric Power Company
6610 Nuclear Road
Two Rivers, Wisconsin 54241

Town Chairman
Town of Two Creeks
Route 3
Two Rivers, Wisconsin 54241

Chairman
Public Service Commission
of Wisconsin
Hills Farms State Office Building
Madison, Wisconsin 53702

Regional Administrator, Region III
U.S. Nuclear Regulatory Commission
Office of Executive Director
for Operations
799 Roosevelt Road
Glen Ellyn, Illinois 60137

Resident Inspector's Office
U.S. Nuclear Regulatory Commission
6612 Nuclear Road
Two Rivers, Wisconsin 54241

UNITED STATES NUCLEAR REGULATORY COMMISSIONWISCONSIN ELECTRIC POWER COMPANYPOINT BEACH NUCLEAR PLANT, UNIT NOS. 1 AND 2DOCKET NOS. 50-266 AND 50-301NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO
FACILITY OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS
CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-24 and DPR-27, issued to the Wisconsin Electric Power Company (the licensee), for operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2, located at the licensee's site in Manitowoc County, Wisconsin.

The amendments would revise provisions of the Point Beach Nuclear Plant, Unit Nos. 1 and 2, Technical Specifications (TS's) relating to the permissible enrichments for storage of fuel assemblies in the new fuel storage vault and spent fuel storage pool. Specifically, the amendments would increase the U-235 content permitted for OFA fuel assemblies from 39.4 grams per axial centimeter to 40.0 grams per axial centimeter. In addition, the word "assemblies" is changed to "assembly" in two places in order to clarify the intent of the TS in that it applies to each fuel assembly and not to an average over more than one assembly.

The licensee believes that exigent circumstances exist. On July 6, 1988, the licensee submitted a license amendment application which would permit the storage of fuel with U-235 content of up to 46.8 grams per axial centimeter of OFA fuel assemblies. The application included discussion of the criticality analysis for both the new fuel storage vault and for the spent fuel storage pool showing that adequate margin exists for maintaining the 5 percent shutdown margin stated in TS 15.5.4.2. The licensee also provided an evaluation of the potential effects of the higher enriched fuel and the associated increase in discharge burnup in relation to decay heat, radiation effects, and gamma heating on the spent fuel pool. The licensee concluded that these parameters were generally insensitive to increasing U-235 content because higher discharge burnups result in fewer fuel assemblies discharged per cycle and that heating and gamma dose considerations were bounded by previous analysis.

In mid-February 1989, the NRC notified the licensee that it was necessary for the NRC to engage an outside consultant to review possible environmental effects of potential accidents involving the more highly enriched/higher burnup fuel. As a result, it is unlikely that the July 6, 1988 request for amendments would be approved before the end of 1989. At that time, the licensee notified the NRC that 16 fuel assemblies had been ordered at a nominal enrichment of 4.0 weight percent U-235 (equivalent to 39.4 grams per axial centimeter) and that it was possible that some assemblies could exceed the specification limit of 39.4 grams of U-235 per axial centimeter due to normal enrichment process tolerances

(+/- 0.05 weight percent). All fuel assemblies have now been fabricated and the final fuel assays indicate that 9 of the 16 assemblies exceed the 39.4 gram per axial centimeter limit for U-235 content. The U-235 content in the 16 fuel assemblies varied from 39.19 grams per axial centimeter to 39.64 grams per axial centimeter with an average of 39.415 grams per axial centimeter. On March 20, 1989, the licensee provided this information to the NRC along with their conclusion that these assemblies satisfied the intent of the TS's based on the region average U-235 content taken to 3 significant digits (as expressed in the TS's). On March 21, 1989, the NRC informed the licensee that the licensee's interpretation was contrary to that of the NRC staff and that each of the fuel assemblies must comply with the TS 15.5.4.2 limit on U-235 loading.

The licensee believes that exigent circumstances exist in that failure to obtain relief from the NRC TS interpretation could cause a delay in the resumption of operation of Point Beach Unit 1. Unless TS 15.5.4.2 is revised, the licensee will be unable to store those fuel assemblies with U-235 content exceeding 39.4 grams per axial centimeter in the spent fuel storage pool. This will result in significant delay in the sequencing of the core load and fuel shuffle, since those fuel assemblies will require extraordinary measures and special procedures to be moved from the new fuel shipping containers to the reactor vessel. The resulting delays could extend the refueling outage and delay return to power by 1½ days. Furthermore, in the event that

the licensee had to subsequently unload the core, startup could be delayed indefinitely, since the licensee would have no storage area authorized to receive these fuel assemblies.

The licensee submitted an application to revise the TS limit concerning U-235 fuel loading 9 months prior to the scheduled refueling shutdown and could not have foreseen the delay necessary to complete processing of their application. Further, the licensee had no actual knowledge that certain OFA fuel assemblies did in fact exceed the fuel loading limit until fuel fabrication was complete. Finally, wording of the TS (use of the word "assemblies") seemed to indicate that an average U-235 content over a region (consisting of two or more fuel assemblies) was implied. The licensee believes that such an interpretation is reasonable and had no prior knowledge that the NRC staff interpretation would be more restrictive.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated since the U-235 loading level is not a parameter that is considered in accident analyses for operations of the Point Beach Nuclear Plant. Furthermore, the new fuel storage vaults and the spent fuel pool have already been evaluated for higher enrichment levels than requested for these amendments. Criticality analyses for the new fuel storage vault and the spent fuel pool show that, with a U-235 fuel loading of 40.0 grams per axial centimeter for OFA fuel assemblies, more than adequate margin exists to meet the 5 percent shutdown margin stated in TS 15.5.4.2. The probability or consequences of a spent fuel accident related to increased decay heat, radiation effects, or gamma heating remain unchanged because there is no associated increase in discharge burnup. The proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated since the amendments do not result in any physical changes either to plant equipment (other than the increased U-235 loading) or procedures. Finally, the proposed amendments would not involve a significant reduction in a margin of safety for the same reasons discussed above under the probability or consequences of an accident previously evaluated. No other safety margins are affected.

The Commission has provided guidance concerning the application of the criteria by providing examples of actions not likely to involve significant hazards considerations (51 FR 7751). One of the examples

of actions not likely to involve significant hazards considerations is "(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The change in the U-235 loading limit for OFA fuel assemblies is an administrative change since the limit would be changed to correct an error in that the TS, as written, did not account for the normal enrichment process tolerances for nominal 4.0 weight percent fuel. Further, to remove the ambiguity in interpretation of the U-235 loading limit the word "assemblies" has been changed to "assembly" for both the standard and OFA fuel loading limits. This is an administrative change clarifying the intent of the technical specification in that the U-235 loading limit applies to each fuel assembly individually. The proposed amendments match the Commission's example and on this basis, a proposed determination of no significant hazards is made.

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications

Services, Office of Administration and Resources Management, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of the FEDERAL REGISTER notice.

Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 3, 1989 , the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in

the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue an amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of

the 15-day notice period, provided that its final determination is that the amendments involve no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325-6000 (in Missouri 1 (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this FEDERAL REGISTER notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C., 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 23, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D. C. 20555, and at the Local Public Document Room, Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Rockville, Maryland, this 28th day of March 1989.

FOR THE NUCLEAR REGULATORY COMMISSION



James R. Hall, Acting Director
Project Directorate III-3
Division of Reactor Projects - III,
IV, V and Special Projects
Office of Nuclear Reactor Regulation