

UNITED STATES OF AMERICA  
BEFORE THE NUCLEAR REGULATORY COMMISSION



POINT BEACH NUCLEAR PLANT UNIT 1  
DOCKET NO.  
50-266

RESPONSE OF WISCONSIN'S ENVIRONMENTAL DECADE, INC., TO SUBMISSION OF  
WISCONSIN ELECTRIC POWER COMPANY ON PETITION FOR LEAVE TO INTERVENE  
AND PETITION FOR HEARING

Reference is made to the proposed license amendment of Wisconsin Electric Power Company ("Company"), dated November 2, 1979.

This constitutes the reply of Wisconsin's Environmental Decade, Inc., ("Decade") to the response of the licensee Company opposing our November 26, 1979, Petition for Leave to Intervene and Petition for Hearing in this regard.

Two arguments are asserted by the Company as to why the petition should be denied by the Director of Nuclear Reactor Regulation ("Director"). One argument is that the Decade's petition is premature; and the other is that the Decade's petition is too late. Clearly, the Company's arguments are internally inconsistent. Neither of the extreme positions put forward by the Company is correct. Rather, the middle course, which is the one pursued by the Decade, is the proper one.

I. THE PETITION IS NOT "PREMATURE".

The Company first argues that the Decade's petition is "premature" because a petition to intervene and a petition for a hearing can only be held after the Director has determined to commence a "proceeding" under sec. 10 CFR 2.105, and the Director has not yet done that in this case. Applicant's Response to Petition for Leave to Intervene and Petition for Hearing of Wisconsin's Environmental Decade, Inc., dated December 7, 1979 ("Applicant's Response"), at 2.

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If, arguendo, the Company's reading of the federal regulations were the correct one, an absurd result would occur, as the right to intervene and request a hearing would be a futile gesture. This is because of two possible scenarios that could occur under the federal regulations. Under 10 CFR 2.106 the Director may issue in the Federal Register a notice of a "proposed" decision on a license amendment application. 10 CFR 2.106(a)(2). Once the Director acts under that section, then, it is too late for a person to intervene and request a hearing before the staff. Under sec. 10 CFR 2.105 the Director must first determine whether or not there should be the opportunity for public hearing, taking into account the "public interest" involved and whether or not there is a "significant hazard" involved, prior to its final determination on whether there should be a "proceeding" on the license amendment application. Id.

Clearly, if the Director determines that there will not be a "proceeding", then the time is too late for the public to request a hearing. In either situation, under the Company's interpretation of the federal regulations, a Catch 22 situation results because there is no point in time when the public can have effective input into the decision of whether or not to issue an amendment license without hearing.

It is the Decade's position that the federal regulations must be read reasonably so as not to produce an absurd result. In particular, the regulations should be read to mean that the public should have the opportunity for input on the question of whether the public interest or a significant health hazard is posed by the license application. Under the Company's theory, those most affected by the impacts of a license amendment are totally shut out of this important process.

II. THE PETITION IS NOT TOO LATE.

The Company next proceeds to argue in effect that the Decade's petition is too late because the Commission has already denied a request for a hearing from the Decade on a prior occasion and the Commission denied that request. Applicant's Response at 4.

Although we believe that the issues to be determined by the Director are different in each of the two situations where a hearing was requested, even if we assumed, arguendo, that the Company was correct on that point, there still is further reason why the petition is not too late and should not summarily be denied. This is because subsequent to the Commission's decision denying our November 14, 1979, request for a hearing, new events have occurred which substantially undermine the appropriateness of the denial of the hearing request on the generic tube degradation problem being experienced at the Point Beach plant.

On the evening of December 11, 1979, a sudden leakage of 200 gpd was observed in "B" generator. Any further analysis of the proposed license amendment must consider this new fact.

III. NOTWITHSTANDING ITS OBJECTION TO THE GRANTING OF THE DECADE'S REQUEST, THE COMPANY INCORRECTLY PROCEEDS TO ARGUE THE MERITS OF THE LICENSE AMENDMENT APPLICATION.

Apparently the Company believes that by presenting argument on the merits of whether or not the amendment should be issued (i.e., whether the license sought to be amended so as to reduce the pressure), it will either substitute for the necessity of a hearing or so color the Director's decision on the Decade's petition so as to compel the Director to deny the request for a hearing.

Regardless, the Company's attempts should be rejected. Arguments by counsel in briefs which are unsupported and unsworn statements simply do

not substitute, either legally or in practice, for the rigors of a factual adjudicatory hearing where frequently bold conclusory statements of counsel crumble under the rigors of cross-examination.

We believe that the Director's decision on the license application, especially in light of the new and unexpected shut-down of the plant on December 11, 1979, ought to be based on expert facts in the record, tested by cross-examination and rebuttal, and not on arguments by counsel in unsworn submissions.

IV. CONCLUSION

On the basis of the pleadings and submissions made hereto, petitioner respectfully requests the Director to grant the petition for leave to intervene and for a hearing.

Dated this 12th day of December, 1979, at Madison, Wisconsin.

WISCONSIN'S ENVIRONMENTAL DECADE, INC.

by

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I hereby certify that on December 12, 1979, I personally deposited in the United States First Class Mails a copy of this document to Mr. Darrell G. Eisenhut, Mr. Harold Denton, Docketing and Service Section, Mr. Samuel J. Chilk, Ms. Marian E. Moe, Mr. Edwin J. Reis, and Mr. Gerald Charnoff to their proper addresses.

Kathleen M. Falk