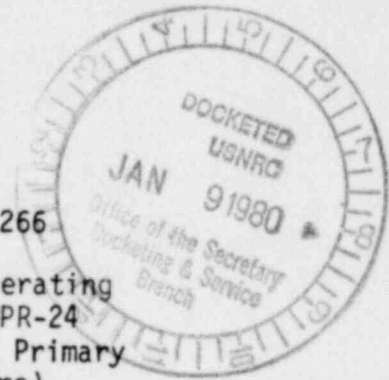


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	Docket Nos. 50-266
WISCONSIN ELECTRIC POWER COMPANY)	Amendment to Operating
(Point Beach Nuclear Plant,)	License No. DPR-24
Unit 1))	(Reduction of Primary
)	System Pressure)



NRC STAFF RESPONSE TO PETITION FOR LEAVE TO INTERVENE
AND PETITION FOR HEARING OF WISCONSIN'S ENVIRONMENTAL DECADE, INC.

INTRODUCTION

On December 7, 1979, the NRC Staff received a "Petition for Leave to Intervene and Petition for Hearing," dated November 28, 1979, from Wisconsin's Environmental Decade (Decade). Decade requests an adjudicatory hearing on Wisconsin Electric Power Company's application for an amendment dated November 2, 1979, to its operating license for the Point Beach Nuclear Plant, Unit 1, to allow it to operate the primary system steam generator tubes of that unit and Point Beach Unit 2, at a pressure of 2000 psia, as well as at the 2250 psia pressure presently authorized. The amendment was sought to relieve stresses on the steam generator tubes in Unit 1 particularly, because they have been subject to stress corrosion degradation.

The NRC Staff opposes the petition because the application for the amendment as to Unit 1 has been withdrawn, and a hearing on the issues the petitioner seeks to raise may be considered in connection with the Order allowing the Point Beach Unit 1 to return to service subject to Commission requirements.

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BACKGROUND

On November 14, 1979, prior to the instant petition, Decade had requested that the Commission prohibit the reopening of the Point Beach Nuclear Power Plant, Unit 1, which was then out of operation for refueling, because of steam generator tube degradation. On November 20, 1979, the Commission referred this matter to the Director of Nuclear Reactor Regulation for consideration under 10 CFR §2.206, governing requests for enforcement action, with a request that the Staff brief the Commission prior to taking action on Decade's request. On November 28, 1979, the Staff briefed the Commission of its intent to allow restart of the unit with the imposition of certain conditions that the licensee agreed to, and of its intent to deny Decade's petition. Decade also set out its position at that Commission meeting.

On November 30, 1979, the Staff, with approval of the Commission, issued a "Confirmatory Order for Modification of License," which allowed restart of Unit 1 subject to certain conditions, and a "Director's Decision under 10 CFR 2.206," which denied Decade's request for an order prohibiting restart of Point Beach Nuclear Power Plant, Unit 1. The Confirmatory Order provided, inter alia, that any person whose interest may be affected by the Order could request a hearing with respect thereto, but that such request would not affect the immediate effectiveness of the Order. On December 17, 1979, Decade asked for such a hearing on the Confirmatory Order, and asked that the Commission consider the material submitted with its request for such a hearing in its review of the Director's Decision under 10 CFR §2.206(c)(1).

At a public meeting on January 2, 1980, the NRC Staff informed the Commission that it intended to modify the Confirmatory Order of November 30, 1979, to require the licensee to operate the primary steam generator tubes of Point Beach Unit 1 at 2000 psia, to provide continued assurance that the unit can be operated safely. The Decade attended that meeting. The Commission did not object to the Staff's proposed action modifying the Confirmatory Order. Thereafter, on January 3, 1980, the Director of NRR issued such a modification, immediately effective, to the Confirmatory Order, finding that such action was required to protect the public interest, health and safety. (A copy of that modification to the Confirmatory Order and the underlying safety evaluation is attached). In conjunction with the issuance of that modification to the Confirmatory Order the licensee withdrew its request to amend its license to allow it to operate Point Beach Unit 1 at 2250 psia or 2000 psia. (A copy of the licensee's letter of December 31, 1979, containing that withdrawal is attached).

DISCUSSION

I.

The request for a hearing on the proposed amendment has been rendered moot by the licensee's withdrawal of its request for the license amendment to reduce steam generator tube operating pressure in Unit 1, as a result of the imposition of such requirements by the Order of January 3, 1980. The Decade has already requested a hearing on the Confirmatory Order. Upon a proper showing of interest and how that interest is affected by the Confirmatory Order, Decade would be

entitled to a hearing on that Order.^{1/} In that hearing matters involving the safety consequences of that part of the modified Confirmatory Order requiring a reduction in steam generating tube operating pressures in Unit 1, as well as other relevant matters pertaining to the Order, could be raised as issues.

II.

The NRC Staff modified the Confirmatory Order, rather than acting on the request to amend the license for Unit 1 for two reasons. First, as detailed in the attached order and safety evaluation, the Staff believes that immediately effective action was required in order to provide continued assurance of safe operation of the facility--namely that the licensee be ordered to operate the degraded steam generator tubes for Unit 1 at a pressure of 2000 psia rather than giving the licensee a choice, as it had requested, of operating at that pressure or at 2250 psia.

Second, by modifying the Confirmatory Order in regards to Unit 1, rather than acting on the licensee's request for amendment of its license,^{2/} all issues involving the operation of Unit 1 with degraded steam generator tubes, including the Decade's objections to that action can be consolidated into one proceeding.

^{1/} In order to show that its interests may be affected, it is necessary for an organization such as the Decade to show, among other things, that it is authorized to represent at least one member who resides in an area where his interests could be affected by the proposed amendment. See Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 389-397 (1979); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n. 4 (1977).

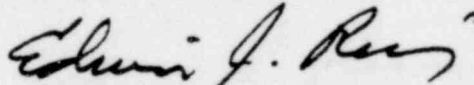
^{2/} If the amendment route had been pursued, the amendment could have been post-noticed pursuant to 10 CFR §2.106 since the safety evaluation demonstrates that no significant hazard consideration is involved.

In short, the Decade, if it can meet the Commission's intervention requirements, is entitled to a hearing on the Confirmatory Order of November 30, 1979. The January 3, 1980, "Order Modifying Confirmatory Order of November 30, 1979," also provides that those who might be affected by that Order may request a hearing. Thus, the Staff, in modifying the Confirmatory Order, instead of acting on the request for an amendment, did not prejudice any rights of the Decade to a hearing. In either event Decade has a right to a hearing on a proper showing that its interests are affected. In neither event was it entitled to a hearing prior to Staff action.

CONCLUSION

Accordingly, the subject petition to intervene and request for a hearing on the proposed license amendment should be denied.

Respectfully submitted,



Edwin J. Reiss
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland
this 8th January, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
WISCONSIN ELECTRIC POWER COMPANY)	Docket No. 50-266
(Point Beach Nuclear Plant,)	
Unit 1))	

ORDER MODIFYING CONFIRMATORY ORDER OF NOVEMBER 30, 1979

I

Wisconsin Electric Power Company (the Licensee) is the holder of Facility Operating License No. DPR-24 which authorizes the Licensee to operate the Point Beach Nuclear Plant, Unit 1, located in Two Creeks, Wisconsin, under certain specified conditions. License No. DPR-24 was issued by the Atomic Energy Commission on October 5, 1970, and is due to expire on July 25, 2008.

II

Inservice inspections of the Point Beach Unit 1 steam generators performed during August 1979 and October 1979 outages have indicated extensive general intergranular attack and caustic stress corrosion cracking on certain of the external surfaces of the steam generator tubes. The NRC Staff determined in November 1979 that additional operating conditions would be required to assure safe operation prior to resumption of operation of Point Beach Unit 1 from a refueling outage. Such conditions were imposed by Confirmatory Order for Modification of License dated November 30, 1979. In addition to those conditions, the Staff has now determined that additional conditions are required to provide continued assurance that Point Beach Unit 1 can be operated safely.

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These additional conditions are analyzed in a Staff Safety Evaluation Report, dated this date, which is attached to this Order. The Licensee has agreed to this condition by letter dated December 31, 1979.

III

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Part 2 and Part 50, IT IS HEREBY ORDERED THAT License No. DPR-24 be amended, in the manner hereafter provided, to include the following conditions in addition to those conditions listed in the Confirmatory Order of November 30, 1979:

1. Unit 1 will be operated at a reactor coolant pressure of 2000 psia with the associated parameters (i.e., overtemperature ΔT and low pressurizer pressure trip point) with the limits indicated in the Safety Evaluation Report appended to this Order.
2. The licensee shall develop and follow the necessary procedures for operating Unit 1 at the conditions described in condition 1 above.

IV

In view of the above, this amendment of License No. DPR-24 is made immediately effective. Accordingly, within 48 hours of receipt of this Order, the Point Beach Unit facility shall be operated at a reactor coolant system pressure of 2000 psia within the parameters described above.

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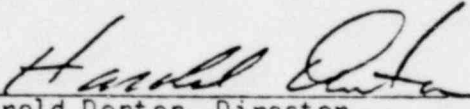
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Any person whose interest may be affected by this Order may within twenty days of the date of this Order request a hearing with respect to this Order. Any such request shall not stay the effectiveness of this Order. Any request for a hearing shall be addressed to the Director of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555.

In the event a hearing is requested, the issues to be considered at such hearing shall be:

- 1) Whether the facts stated in Section II of this Order are correct;
and
- 2) Whether this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION



Harold Denton, Director
Office of Nuclear Reactor Regulation

Attachment:
Staff Safety Evaluation Report,
dated January 3, 1980

Effective date: January 3, 1980
Bethesda, Maryland

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