

December 27, 1979



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION

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

LICENSEE'S RESPONSE TO REQUEST BY
WISCONSIN'S ENVIRONMENTAL DECADE, INC.
FOR HEARING ON CONFIRMATORY ORDER

By "Confirmatory Order for Modification of License" dated November 30, 1979 ("Order") (44 Fed. Reg. 70608 (December 7, 1979)), the Director, Nuclear Reactor Regulation ("NRR"), established additional operating conditions for Point Beach Nuclear Plant, Unit 1 to ensure safe operation in light of an identified problem with steam generator tube degradation. The Order provided that any person whose interest may be affected by the Order may request a hearing with respect to the Order, but that "any request for a hearing shall not stay the effectiveness of [the] Order." The Order also provided that the issues to be considered at the hearing were limited to (i) whether the facts stated in Section II and III of the Order are correct and (ii) whether the Order should be sustained. By request dated December 17, 1979, Wisconsin's Environmental Decade, Inc. ("Decade"), asks for a hearing and argues, notwithstanding the specific language in the Order to the contrary, for a stay of the effectiveness of the Order.

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On the same day of the Confirmatory Order, the Director also denied Decade's earlier petition filed on November 14, 1979, pursuant to 10 C.F.R. §2.206, which requested the Commission to prohibit operation of Point Beach Unit 1 and to commence an investigation and hearing on the safety implications of steam generator tube degradation. "Director's Decision Under 10 CFR 2.206" dated November 30, 1979 ("Decision"). Prior to issuance of the Decision, the Commissioners were briefed by the NRR Staff on the proposed disposition of Decade's petition. At this briefing, Decade was provided an opportunity to respond to the Staff's presentation. As Decade's December 17 cover letter to the Commissioners acknowledges, no petition or other request for review of a Director's decision under §2.206 is permitted by the Commission's rules. Nonetheless, Decade's request for a hearing and its letter to the Commissioners is best characterized as an attempt to have the Commission overturn the Director's Decision. Returning to the well one more time on this issue is not allowed by the Commission's rules.

Decade's request for a hearing should be denied. The request for a hearing is defective. Decade has not set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene. Moreover, the Petition fails to set out with any particularity the specific facts in Sections II and III of the Order that

Decade contends are incorrect and as to which Decade wishes to intervene. See 10 C.F.R. §2.714(a)(1) and (2).

Nor does Decade's "Memorandum in Support of Request by Wisconsin's Environmental Decade, Inc. for Hearing on Confirmatory Order" ("Memorandum") adequately support Decade's request for a hearing. Rather it once again argues for suspension of Point Beach Unit 1's operating license and for an adjudicatory hearing on the generic steam generator tube degradation problem. As will be discussed in the analysis below, Decade's Memorandum, except with respect to the allegations concerning Mr. Case, offers no information which was not previously before the NRC when Decade's §2.206 Petition was denied.

Analysis of Decade's Memorandum
In Support of Its Request
For Hearing on Confirmatory Order

Decade's Memorandum in support of its petition for hearing on the Confirmatory Order argues (a) that Point Beach should be closed pending resolution of the tube degradation issue, and (b) that an adjudicatory hearing should be held on the generic steam generator tube degradation matter.

In support of its argument that the Confirmatory Order permitting operation of Point Beach should be reversed, Decade offers arguments. None has any merit. Each is considered below.

First, Decade contends that Licensee's proposed "package" provides insufficient assurance that significant tube defects will be identified in a timely manner. In support of this propo-

sition, Decade offers only (a) an argument it made to the Commission at the November 28, 1979 briefing regarding the value of increased periodic hydrostatic pressure tests and eddy current tests, (b) a second argument it made to the Commission at the same meeting regarding reduction in the allowable primary to secondary leak rate, and (c) a remarkable accusation that Mr. E. G. Case of the Staff privately contradicted the Staff's presentation to the Commission.

It is obvious that a hearing would serve no purpose simply to have the Commission consider again the two propositions previously advanced by Decade and rejected by the Commission at the November 28, 1979 briefing. As to the third reason, Decade's accusation of Mr. Case simply defies belief. While we are accustomed to Mr. Anderson's frequent misunderstandings of technical matters, one would have to be more than charitable to assume that Decade's reckless assertion of Mr. Case's lack of integrity was only a matter of misunderstanding. It is nothing more than a deplorable display of arrogance. It should be emphatically rejected.

As a second reason for reversal of the Confirmatory Order, Decade points to the leakage which developed after return to service of Point Beach Unit 1 following issuance of the Confirmatory Order. This, of course, was a post-Order event of the type which was anticipated in Section IV of the Order. Thus, it is doubtful that it disputes the correctness of the facts stated in Section II

and III of the Order. The Licensee Event Report, dated December 22, 1979, shows that the leakage was due to one leaking tube and to two faulty plugs inserted earlier. This event does not reflect poorly on the efficacy of the Licensee's package to deal with the deep crevice tube degradation matter. Rather, the event demonstrates that the reduced allowable leak rate serves its purpose adequately. The event provides no basis for initiating a hearing because it does not dispute any fact stated in Section II or III of the Order.

As a third reason for requesting a hearing, Decade contends that the tube degradation has not been confined to the tube sheet. Moreover, Decade levels a second charge of lack of integrity. This time it is pointed at the Staff as a whole and indirectly at the Licensee. Both are charged with withholding relevant^b information from the Commission. This is not true.

There was no withholding of information by the Licensee. As Decade itself points out, the five suspect indications were included in Licensee's LER report of November 16. What Decade fails to appreciate is that the issue before the Commission on November 28 was tube degradation due to intergranular corrosion. As the attached letter of December 21, 1979 to the Staff shows, Wisconsin Electric believes those five indications are attributable to earlier thinning or cracking rather than to intergranular corrosion. That this condition has not progressed is demonstrated by the recently completed eddy current tests of 1900 tubes in both A and B steam

generators which revealed no indications at or above the tube sheet. Decade's reiteration of the American Physics Society concerns about steam generator tube failures above the tube sheet coincident with a LOCA are simply not pertinent. The Commission heard this same concern by Decade on November 28 and correctly gave it no heed, given the circumstances here.

Finally, as a fourth reason for reversing the Confirmatory Order, Decade argues that even if further tube degradation were confined to the tube sheet, there still exists a serious safety problem. To manufacture its argument, Decade postulates without any confirming test data that longitudinal defects could dovetail. Decade presumes "for sake of discussion" that 20% of remaining wall thickness is required to prevent a double ended tube failure -- ignoring all the test data showing only 10% is required -- and mischaracterizes what Westinghouse said at the November 20 meeting regarding eddy current tests. The Decade essay, after brushing away all the attendant noise, simply charges that there is a realistic probability of 185 tubes failing. Of course, if the Staff had said that 50 or 500 tubes would have to fail, Decade would charge that 50 or 500 tubes would or could fail.

With this final argument, Decade moves into its basic request -- i.e., a generic tube degradation hearing which would consider the interface between steam generator tube integrity and the acceptance criteria utilized to evaluate emergency core cooling system.

Whatever the merits -- or lack thereof -- of the Decade petition, to the extent it requests a generic tube degradation hearing, it clearly goes well beyond the issues allowed in any hearing on the Confirmatory Order.

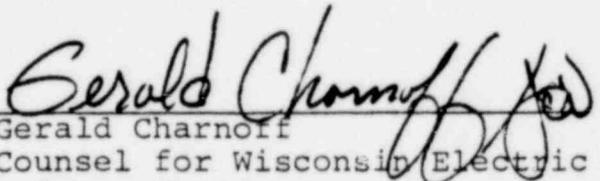
In conclusion, we respectfully submit that the Decade petition should be denied in this docket because:

- a) it fails to state the interest of Decade and how that interest may be affected by the proceeding;
- b) it fails to set out matters in controversy within the issues set out for hearing in the Confirmatory Order;
- c) it is only an attempt to subvert the Commission's rules, which do not permit a request for review of the Director's decision under §2.206; and
- d) it amounts only to a request for a rulemaking regarding the interface of the ECCS acceptance criteria and steam generator tube integrity on a generic basis, which is not appropriate in this particular docket.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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