

December 7, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



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| In the Matter of |) | Docket Nos. 50-266 |
| |) | 50-301 |
| WISCONSIN ELECTRIC POWER COMPANY |) | |
| |) | Amendment to License Nos. |
| (Point Beach Nuclear Plant, |) | DPR-24 and DPR-27 |
| Units 1 and 2) |) | (Reduction of Primary |
| |) | System Pressure) |

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

By letter to the Director, Office of Nuclear Reactor Regulation ("NRR"), dated November 2, 1979, Wisconsin Electric Power Company ("Applicant") requested an amendment to Facility Operating Licenses DPR-24 and DPR-27 to incorporate changes in the technical specifications for the Point Beach Nuclear Plant, Units 1 and 2. The proposed changes would allow operation of the Point Beach units at a reduced primary system operating pressure of 2,000 psia, which is 250 psi lower than the original design primary system pressure. Reduction of the primary system pressure is one of a number of actions being taken by, or proposed by, Applicant to reduce the stresses on Point Beach steam generator tubes. No action has yet been taken by the Director, NRR, on the request pursuant to 10 C.F.R. § 2.106; nor has the Director, NRR, initiated a proceeding with respect to the request under 10 C.F.R. § 2.105.

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On November 26, 1979, Wisconsin's Environmental Decade, Inc. ("Decade") filed a "Petition for Leave to Intervene and Petition for Hearing" in the "proceeding in which the licensee Wisconsin Electric Power Company has applied for an amendment to its operating license by filing dated November 2, 1979". At best, Decade's Petition is premature. Section 189a of the Atomic Energy Act requires the NRC to hold hearings only after a proceeding has begun. Pending action by the Director, NRR, under 10 C.F.R. § 2.105 or § 2.106, no proceeding has been initiated.

Under § 2.105, the Director, NRR, is required to publish prior notice of its intent to amend a reactor operating license where the amendment involves a significant hazards consideration. In other instances, the amendment may be issued along with a notice of the license amendment pursuant to § 2.106. In the instant situation prior notice under § 2.105 is not required because the proposed reduction of primary system operating pressure does not involve any significant hazards consideration. The Point Beach Nuclear Plant, Units 1 and 2 operated at 2,000 psia for an extended period in 1974 to 1976 as a result of an earlier license amendment following a complete review of all health and safety considerations.^{1/} When the license

^{1/} Previously, the change of primary system operating pressure was made in response to a fuel densification problem. There was concern that inadequate densification of the fuel during fabrication could result in gaps in the fuel rods with the potential for clad collapse. The reduction in primary system pressure to 2,000 psia reduced the potential for clad collapse. One solution to the fuel densification problem was to increase.

amendment was issued for Point Beach Unit 1, the Commission then found:^{2/}

We have concluded that the proposed change, as modified, does not involve a significant hazards consideration because it does not involve a safety consideration of a type or magnitude not previously considered, it does not potentially increase the probability or consequences of an accident previously considered, and does not potentially decrease the margins of safety during normal plant operation, anticipated operational occurrences, or postulated accidents previously considered. We also conclude that there is reasonable assurance that the health and safety of the public will not be endangered by operation in the manner proposed.

Essentially the same conclusion was reached a few months later in issuing the license amendment for Point Beach Unit 2. Both license amendments, allowing operation of the Point Beach units at a primary system pressure of 2,000 psia, were issued without prior notice. Nothing has occurred that would change that earlier conclusion in the Commission's Safety Evaluation Report concerning the same reduction in primary system operating pressure now again under consideration.

Moreover, there are significant policy considerations for proceeding with the requested amendment without prior notice under § 2.105. While the amendment is not essential for safe

-- footnote cont'd --

1/ the internal pressure in the fuel assembly. When this action was taken, Applicant applied for and was granted a license amendment to return the primary system pressure to 2,250 psia. Now that the densification problem has been resolved by improvements to the fuel fabrication process, it is no longer a consideration in selecting the primary system operating pressure. See Applicant's Request for License Amendment dated November 2, 1979 and references cited therein. Amendment 3 to DPR-24 was issued May 23, 1974 (39 Fed. Reg. 20227 (June 7, 1974)); Amendment 5 to DPR-27 was issued September 30, 1974 (39 Fed. Reg. 36133 (October 8, 1974)).

2/ See Safety Evaluation by the Directorate of Licensing Amendment No. 3 to Facility Operating License No. DPR-24 (Change No. 8 to Appendix A of Technical Specifications) Wisconsin Michigan and Wisconsin Electric Power Company, Point Beach Nuclear Unit No. 1, Docket No. 50-266, 3 (May 23, 1974).

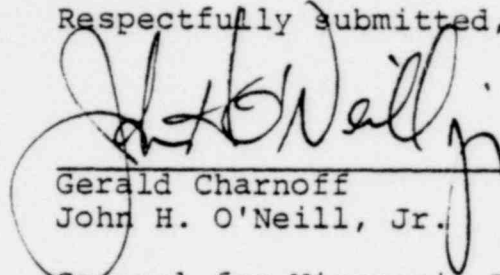
operation of the plant, reduction of the primary system operating pressure, as proposed, would reduce the primary to secondary system pressure differential on the Point Beach steam generator tubes, and thereby enhance their integrity. For these reasons the license amendment should be issued immediately after the Director, NRR, makes the appropriate findings with notice of the action pursuant to § 2.106.^{3/}

If, notwithstanding the foregoing, the Director, NRR, determines that an opportunity for a hearing prior to issuance of the license amendment should be provided, we respectfully urge the Commission promptly to appoint a Licensing Board to rule on the Decade petition, to define carefully the scope of the proceeding, and to proceed expeditiously to a decision. The Board should take notice that the Commission authorized the Staff to proceed with its decision under § 2.206, issued on November 30, 1979, which denied Decade's petition under that section for an investigation and hearing on the safety implications of the tube degradation at Point Beach. Thus, any hearing which might ensue from consideration of Applicant's November 2, 1979 request should be strictly limited to the safety considerations,

3/ If Decade believes it can make a showing why the amendment should not have been issued, it can then request a hearing challenging the action by the Director, NRR, in issuing the amendment to the license.

if any, inherent in that request to reduce the primary system pressure; it should not be treated as an invitation to hold the very hearing which was denied by the Director, NRR, on November 30, 1979, with the Commission's concurrence.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John H. O'Neill, Jr.", is written over a horizontal line. The signature is written in dark ink and is somewhat stylized.

Gerald Charnoff
John H. O'Neill, Jr.

Counsel for Wisconsin Electric
Power Company

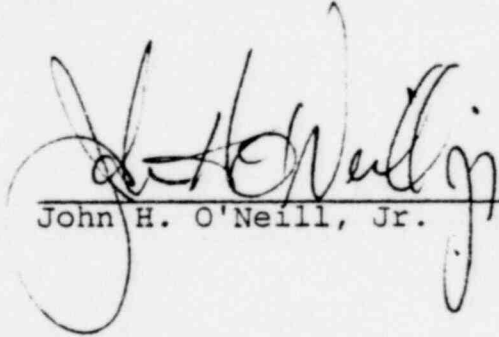
Dated: December 7, 1979

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Response to Petition for Leave to Intervene and Petition for Hearing of Wisconsin's Environmental Decade, Inc.," dated December 7, 1979, were served upon those persons on the attached service list, by deposit in the United States mail, postage prepaid, on this 7th day of December, 1979.



John H. O'Neill, Jr.

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