

October 5, 1981



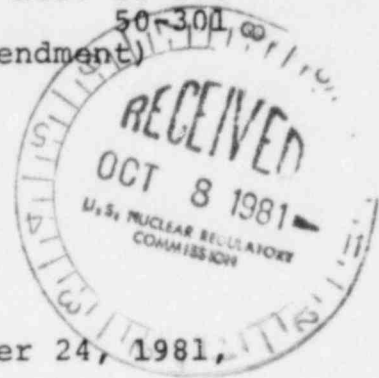
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of )  
 )  
WISCONSIN ELECTRIC POWER COMPANY )  
 )  
(Point Beach Nuclear Plant, )  
Units 1 and 2) )

Docket Nos. 50-266  
50-301, et al.  
(OL Amendment)

LICENSEE'S RESPONSE TO  
PETITIONER'S STATEMENT OF BASES  
FOR PROPOSED CONTENTIONS 3 - 7



By letter to the Board dated September 24, 1981,

Wisconsin's Environmental Decade ("Decade") responded to the Board's directive that it provide the bases for its proposed Contentions 3 - 7. Licensee herein responds to Decade's statements of basis, and submits that Decade failed to provide a basis for any of Contentions 3 - 7, and that its petition for leave to intervene should therefore be denied.

A petition for leave to intervene filed pursuant to 10 C.F.R. § 2.714 must be denied in the absence of at least one contention which meets the requirements of section 2.714(b). None of petitioners' contentions meets the requirements of section 2.714(b) which states that a petitioner must set forth with reasonable specificity the bases for each contention it seeks to have litigated.

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Decade erroneously asserts that it is entitled to await "a full application, the Staff's Safety Evaluation Report, the Licensee's Environmental Report under 10 C.F.R. 51<sup>1/</sup> and complete discovery" before it is required to "finalize its contentions."<sup>2/</sup> The regulations, in fact, provide just the opposite. The current NRC regulatory procedure for commencing and conducting hearings is fashioned and based on two fundamental procedural principles: first, that intervenors have both the opportunity and responsibility to become involved in the licensing process at the earliest possible time, and second, that intervenors must have some colorable reason for their allegations, not just a guess or an allegation for which they hope to search for a basis after being admitted as parties.<sup>3/</sup> Thus, Decade has no right to claim that it does not now have to back up its allegations to some minimal degree, or that the bases it now provides are "preliminary" and that, if these "preliminary" bases fail, it is

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<sup>1/</sup> An Environmental Report is not required by 10 C.F.R. Part 51 for the license amendment request which is the subject of this hearing.

<sup>2/</sup> Decade's reliance on 10 C.F.R. § 2.705 as support for its position that it need not now supply the bases for its contentions is misplaced. Section 2.705 specifies the time within which an answer to a notice of hearing may be filed, and bears no relationship to the requirements for the filing of contentions, specified in section 2.714.

<sup>3/</sup> The Commission's Rules of Practice contemplate that admission of contentions is to precede discovery, and specifies that discovery is to be limited to the subject matter of the contentions. 10 C.F.R. § 2.740(b).

entitled to a second opportunity. Neither Commission regulations nor the Board's directive in this matter support such a position by Decade. If Decade wants to precipitate a hearing in this case it must, in essence, now show a basis for its unlikely claim that operation of Point Beach with steam generator tubes repaired by sleeving is not only worse than continued operation of Point Beach under existing conditions, but also that sleeving presents unacceptable safety consequences. Licensee finds such allegations incredible, and asserts its right to have Decade be required to make the threshold showings required by law to avoid an unnecessary and time consuming hearing which may jeopardize Licensee's ability to timely conduct both its sleeving demonstration program and its full-scale sleeving programs.

Contention 3<sup>4/</sup>

As a basis for this contention, Decade relies on a statement in the testimony of David K. Porter, an employee of Licensee, during the recent steam generator hearings before the Public Service Commission of Wisconsin ("PSCW"). The quoted statement, on its face, does not support Decade's allegation

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4/ Although Decade has addressed Contentions 1, 2 and 10 in its September 24 basis letter, the Board asked only that Decade provide bases for Contentions 3 - 7, Tr. 59, 62. Contentions 1, 2 and 10 are outside the scope of this proceeding, as discussed by Licensee and the Staff in their briefs dated September 25, 1981. In any event, the materials cited by Decade as bases for these contentions bear no relationship whatsoever to sleeving steam generator tubes at the Point Beach Nuclear Plant.

that the braze or weld may "fatally compromise [the tube's] integrity."<sup>5/</sup> Mr. Porter's testimony, in fact, states just the opposite; any reduction of the ultimate strength of the tube resulting from brazing of the sleeve joint is insignificant and "well within the design factors of safety that are used in the material selection of tubing." At the conclusion of that proceeding, in which Decade was an active participant, the PSCW rejected Decade's efforts to prohibit sleeving at Point Beach. By no stretch of the imagination can testimony that weakening will be insignificant and within the applicable safety boundaries be turned around and used as a basis for the allegation that the integrity of the repaired tube will be "fatally compromised." The contention must therefore be rejected for lack of basis.

Contention 4

Decade here contends that the annulus between the original tube and the sleeve may "give rise to an unexpectedly corrosive environment." Even if that were to be the case, the real issue would have to be whether such an "unexpectedly corrosive

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<sup>5/</sup> Decade suggests that the braze or weld is at the upper rim of the sleeve. In fact, the upper joint is set below the sleeve rim, thus precluding a shearing rupture even if the tube were to be significantly weakened by the joint. See Affidavit of David K. Porter, Attachment 1 to Licensee's Motion For Authorization For Interim Operation of Unit 1 With Steam Generator Tubes Sleeved Rather Than Plugged (9/28/81) ("Porter Affidavit"), ¶ 8; Point Beach Steam Generator Sleeving Report For Wisconsin Electric Power Company (Proprietary), ("Westinghouse Report"), § 3.2.

environment" would lead to a leak by virtue of degrading the primary-to-secondary pressure boundary, which in the cited instance would be the sleeve.

Decade cites as its basis for this allegation a September 22, 1980 Staff memorandum. The only statement in that memorandum remotely related to Contention 4 is the Staff's notation that its meeting with Southern California Edison Company regarding their sleeving program for San Onofre Nuclear Generating Station, Unit 1, included a discussion of the "effects of stagnation of secondary water between the sleeve and the tube." There is no indication that the Staff considered this to be a problem at the conclusion of that meeting; in fact, the Staff subsequently authorized a full-scale sleeving program at San Onofre. Thus, Decade has presented no basis whatsoever for the specific allegation that an "unexpectedly corrosive environment" will occur in the annulus, or the implicit allegation that this, if present, would unacceptably degrade the pressure boundary.

In contrast, Licensee has shown that the sleeve is fabricated from thermally treated Inconel 600 which resists corrosion in steam generator environments better than the material of the original tubes. Porter Affidavit, ¶ 6; Westinghouse Report, § 3.2.

#### Contention 5

This contention alleges that eddy current testing will be impaired by sleeving, and that the probability of tube failure

will be increased. Again, Decade relies only on the same September 22, 1980 Staff memorandum. Again, the only reference in the memorandum to the subject is a notation that the Staff discussed the "inspectability of sleeved tubes" at the meeting, with no indication of adverse determinations by the Staff. And again, we note that San Onofre was subsequently authorized by the Staff for full-scale sleeving. Decade has provided no basis for its allegations, and the contention should therefore be rejected.

What Decade failed to mention is that, while eddy current inspection of that portion of the tube adjacent to the sleeve may be more difficult, inspectability of the sleeve, which is the real primary-to-secondary pressure boundary, is equal to or better than the inspectability of the original unsleeved tube. Porter Affidavit, ¶ 7; Westinghouse Report, § 7.2.

#### Contention 6

Decade here alleges that sleeving at Point Beach will "reduce the flow of primary core cooling water and the cooling capacity of the core under various accident scenarios to an extent not bounded in previous safety analyses." That cannot be the case. If Licensee should sleeve so many tubes that the cooling flow will be reduced below the minimum thermal design flow, which is the basis for the core cooling safety analysis and which is a Technical Specification requirement, Licensee would be in violation of its license. Decade's vague reference to the

San Onofre Technical Specification Change Request cannot possibly provide the basis for Decade's allegation that Licensee will violate its own license conditions.<sup>6/</sup> The contention must therefore be rejected for lack of basis.

Contention 7

A newspaper article alleging shoddy repairs at a plant in California cannot possibly provide the basis for Decade's allegation that Licensee will use untrained workers, and that the quality of the work at Point Beach will therefore deteriorate. This contention should summarily be dismissed for lack of basis.

CONCLUSION

Decade has failed to provide the required bases for its proposed Contentions 3 through 7. Further, as discussed in the September 25, 1981 briefs of the Licensee and the Staff, Decade's proposed Contentions 1, 2 and 10 are beyond the scope of the proceeding. Finally, Decade's proposed Contentions 8 and 9 are not truly contentions. Decade has thus failed to meet the "one good

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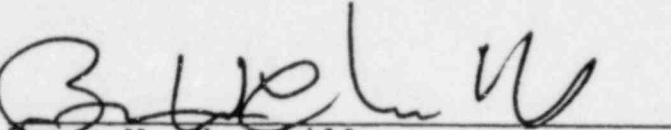
<sup>6/</sup> Licensee's requested authorization to allow sleeving in lieu of plugging would not, if granted, allow Licensee to violate other requirements of its Technical Specifications. If Licensee were later to determine that it wished to sleeve a sufficient number of tubes to so minimize the reactor coolant flow as to be outside the bounds of the safety analyses, it would have to first request a change in the Technical Specifications to allow operation under such conditions. This would entail a revision of the present safevaluation, as was done for San Onofre Unit 1, but Licensee has not made such a request.

contention" requirement of 10 C.F.R. § 2.714(b) and accordingly, its petition for a hearing on Licensee's proposed operating license amendment should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By



Bruce W. Churchill  
Delissa A. Ridgway  
Counsel for Licensee

1800 M Street, N.W.  
Washington, D.C. 20036  
(202) 822-1000

Dated: October 5, 1981



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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Licensee's Response to Petitioner's Statement of Bases for Proposed Contentions 3 - 7" were served, by deposit in the U.S. Mail, first class, postage prepaid, this 5th day of October, 1981, to all those on the attached service list.

  
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Bruce W. Churchill

Dated: October 5, 1981

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SERVICE LIST

Peter B. Bloch, Chairman  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. Hugh C. Paxton  
1229 - 41st Street  
Los Alamos, New Mexico 87544

Dr. Jerry R. Kline  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Atomic Safety and Licensing  
Appeal Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Docketing and Service Section  
Office of the Secretary  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Charles A. Barth, Esquire  
Office of the Executive  
Legal Director  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Kathleen M. Falk, Esquire  
Wisconsin's Environmental  
Decade  
114 North Carroll Street  
Suite 208  
Madison, Wisconsin 53703